Description of Instrument (1)	Proper Stamp Duty (2)
and for every Rs. 1,000 or part thereof in excess of Rs. 1,000.	15.00*
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable under sub-clause (a).
Exemption	
Instrument of pawn or pledge of goods if unattested.	

[*] Substituted by Maha. Act 29 of 1972, Section 12 (2) (1-10-1972).

GUJARAT AMENDMENT

6-A. ALTERATION OF ARTICLES OF ASSOCIATION of a company under S. 97 of the Companies Act, 1956, in consequence of increase of the company's share capital, Instrument of—.	A sum equal to the duty that would have been leviable under Article 10 as though the company's nominal capital had been, when the company was formed, equal to the total share capital so increased, less the sum already paid under Article 10.
Exemption	
Instruments of alteration of articles of any association not formed for profit under Section 25 of the Companies Act, 1956.	Nil.
6-B. ALTERATION OF THE MEMORANDUM OF ASSOCIATION of a company under Section 97 of the Companies Act, 1956, in consequence of increase of company's share capital, Instrument of—	
(a) if the memorandum of association has been accompanied under Section 26 of the Companies Act, 1956, by articles of association on the alteration of which duty is paid under Article 6-A;	
(b) if the memorandum of association has not been so accompanied and the duty is not so paid;	The same duty as is leviable on the memorandum of association under clause (b) of Article 39 as though the company's share capital, when the company was formed, had been equal to the total share capital so increased less the sum already paid under the said clause (b).
Exemption	
Instrument of alteration of memorandum of any association not formed for profit and registered under section 25 of the Companies Act, 1956.	
—Guj. Act 2 of 1970, S. 2 (i) (13-3-1970).	
7. APPOINTMENT IN EXECUTION OF A POWER: where made by any writing not being a will—	
(a) of trustees ..	Twenty-five rupees.
(b) of property moveable or immoveable ..	Forty-five rupees.
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—	
(a) where the amount does not exceed Rs. 1,000 ..	The same duty as a Bond (No. 13) for such amount.
(b) in any other case ..	Twenty rupees*.
Exemptions	
(a) Appraisement or valuation made for information of one party only and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	

[*] Substituted by Maha. Act 29 of 1972, S. 2 (3) (1-10-1972).

Description of Instrument (1)	Proper Stamp Duty (2)
9. APPRENTICESHIP DEED, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment, not being Articles of Clerkship (No. 11). **Exemption** Instrument of apprenticeship executed by a Magistrate under the Apprentices Act, 1850, or by which a person is apprenticed by or at the charge of any public charity.	Fifteen rupees.
10. *[ARTICLES OF ASSOCIATION OF A COMPANY—	
(a) where the company has no share or the nominal share capital does not exceed Rs. 1,00,000;	Fifty rupees.
(b) where the nominal share capital exceeds Rs. 1,00,000 but does not exceed Rs. 5,00,000;	Two hundred and fifty rupees.
(c) where the nominal share capital exceeds Rs. 5,00,000 but does not exceed Rs. 1,00,00,000—	
(i) on the first 5,00,000; ..	Two hundred and fifty rupees.
(ii) on the next Rs. 5,00,000 or part thereof ..	Five hundred rupees.
(iii) on the next Rs. 15,00,000 or part thereof ..	Seven hundred and fifty rupees.
(iv) on the next Rs. 25,00,000 or part thereof ..	One thousand rupees.
(v) on the next Rs. 50,00,000 or part thereof ..	One thousand two hundred and fifty rupees.
(d) where the nominal share capital exceeds Rs. 1,00,00,000 ..	Five thousand rupees.]
Exemption Articles of any association not formed for profit and registered under Section 25 of the Companies Act, 1956. See also Memorandum of Association of a Company (No. 39).	

[*] Substituted by Maha. Act 31 of 1962, S. 3 (3) (15-9-1962).

GUJARAT AMENDMENT

For Article 10 substitute as follows:—	
10. ARTICLES OF ASSOCIATION OF A COMPANY—	
(a) where the company has no capital or the nominal share capital does not exceed Rs. 5,000;	Fifty rupees.
(b) where the nominal share capital exceeds Rs. 5,000, but does not exceed Rs. 1,00,000;	One hundred rupees.
(c) where the nominal share capital exceeds Rs. 1,00,000 but does not exceed Rs. 5,00,000;	Two hundred and fifty rupees.
(d) where the nominal share capital exceeds Rs. 5,00,000 but does not exceed Rs. 1,00,00,000—	
(i) on the first Rs. 5,00,000;	Two hundred and fifty rupees.
(ii) on the next Rs. 10,00,000 or part thereof;	Five hundred rupees.
(iii) on the next Rs. 15,00,000 or part thereof;	Seven hundred and fifty rupees.
(iv) on the next Rs. 20,00,000 or part thereof;	One thousand rupees.
(v) on the next Rs. 50,00,000 or part thereof;	One thousand two hundred and fifty rupees.
(e) where the nominal share capital exceeds Rs. 1,00,00,000.	Five thousand rupees.

Description of Instrument (1)	Proper Stamp Duty (2)
Exemption	
Articles of any Association not formed for profit and registered under section 25 of the Companies Act, 1956. See also Memorandum of Association of a Company (No. 39). —Guj. Act 18 of 1963, S. 3 (3) (22-4-1963).	
11. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court.	Three hundred and seventy-five rupees.
ASSIGNMENT. See Conveyance (No. 25), Transfer (No. 59), and Transfer of Lease (No. 60), as the case may be.	
ATTORNEY. See Entry as an Attorney (No. 31) and Power-of-Attorney (No. 48).	
AUTHORITY TO ADOPT. See Adoption-Deed (No. 3).	
12. AWARD, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	The same duty as a Bond (No. 13) for the amount or value of the property to which the award relates as set forth in such award subject to a maximum of forty rupees.*
Exemptions	
Award under the Bombay District Municipal Act, 1901, Section 160 or the Bombay Hereditary Offices Act, 1874, Section 18.	

[*] Substituted for 'thirty rupees' by Maha. Act 29 of 1972, S. 2 (4) (1-10-1972).

GUJARAT AMENDMENT

Omit words "as set forth in such award" in column 2.—Guj. Act 2 of 1970, S. 2 (ii) (13-3-1970).

*13. BOND [as defined by section 2 (c)], not being a Debenture and not being otherwise provided for by this Act, or by the Bombay Court-fees Act, 1959,—	Rs. nP.
where amount or value secured does not exceed Rs. 50;	1.00.
where it exceeds Rs. 50 but does not exceed Rs. 100;	2.00.
where it exceeds Rs. 100 but does not exceed Rs. 200;	4.00.
where it exceeds Rs. 200 but does not exceed Rs. 300;	6.00
where it exceeds Rs. 300 but does not exceed Rs. 400;	8.00.
where it exceeds Rs. 400 but does not exceed Rs. 500;	10.00.
where it exceeds Rs. 500 but does not exceed Rs. 600;	12.00
where it exceeds Rs. 600 but does not exceed Rs. 700;	14.00.
where it exceeds Rs. 700 but does not exceed Rs. 800;	16.00.
where it exceeds Rs. 800 but does not exceed Rs. 900;	18.00
where it exceeds Rs. 900 but does not exceed Rs. 1,000;	20.00.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	10.00.
See Administration Bond (No. 2), Bottomry Bond (No. 14), Customs Bond or Excise Bond (No. 28), Indemnity Bond (No. 35), Respondentia Bond (No. 53), Security Bond (No. 54).	

Description of Instrument (1)	Proper Stamp Duty (2)
Exemption Bond when executed by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum.	

[*] Substituted by Maha. Act 29 of 1972, S. 2 (5) (1-10-1972).

GUJARAT AMENDMENT

Same as in Maharashtra except for column 2. Entries in column 2 are 0.75, 1.50, 3.00, 4.50, 6.00, 7.50, 9.00, 10.50, 12.00, 13.50, 15.00 and 7.50, respectively.—Guj. Act 18 of 1963, S. 3 (4) (22-4-1963).

14. BOTTOMRY BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.	The same duty as a Bond (No. 13) for the same amount.
15. CANCELLATION — Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for. See also Release (No. 52), Revocation of Settlement (No. 55-B), Surrender of Lease (No. 58), Revocation of Trust (No. 61-B).	Ten rupees.
16. CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by Civil or Revenue Court, or Collector or *[by an officer of Customs]— (a) where the purchase money does not exceed Rs. 10; (b) where the purchase money exceeds Rs. 10 but does not exceed Rs. 25; (c) in any other case.	Forty naye paise. Seventy-five naye paise. The same duty as is leviable on a Conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount of the purchase money only.

[*] Substituted by Maha. Act 31 of 1962, S. 3 (5) (15-9-1962).

GUJARAT AMENDMENT

Same as in Maharashtra—Guj. Act 18 of 1963, S. 3 (5) (22-4-1963).

17. CERTIFICATE OR OTHER DOCUMENT, evidencing the right or title of the holder thereof, or any other person, either to any shares, scrips or stock in or of any incorporated company or other body corporate or to become proprietor of shares, scrips or stock, in or of any such company or body. See also Letter of Allotment of Shares (No. 37).	Twenty naye paise.
18. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is left for the specified purposes of the charterer, whether it includes a penalty clause or not.	Three rupees.
19. (1) CLEARANCE LIST relating to the transactions for the purchase or sale of Government Securities submitted to the clearing house of a stock exchange.	The sum of duties payable under Art. 5 (b) or 43, as the case may be, in respect of each of the entries in such list on the value of the securities calculated at the making

Description of Instrument (1)	Proper Stamp Duty (2)
(2) CLEARANCE LIST relating to the transactions for the purchase or sale of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporated company or other body corporate submitted to the clearing house of a stock exchange recognised under the Securities Contracts (Regulation) Act, 1956.	The sum of duties payable under Art. 5 (c) (i) or 43, as the case may be, in respect of each of the entries in such list on the value of the securities calculated at the making up price or the contract price, as the case may be.
(3) CLEARANCE LIST relating to the transactions for the purchase or sale of a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporated company or body corporate submitted to the clearing house of a stock exchange not recognized under the Securities Contracts (Regulation) Act, 1956.	The sum of duties payable under Art. 5 (c) (ii) or 43, as the case may be, in respect of each of the entries in such list on the value of the securities calculated at the making up price or the contract price, as the case may be.

GUJARAT AMENDMENT

In its application to the State of Gujarat the stamp-duty on every clearance list chargeable under any of the Art. 19, 20, 21, 22 or 23 is to be increased by ten per cent.—Guj. Act VI of 1961, Section 2 and Schedule (1-4-1961).

20. CLEARANCE LIST relating to the transaction for the purchase or sale of cotton submitted to the Clearing House of a Cotton Association.	The sum of duties payable under Article 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transaction or parts thereof.

GUJARAT AMENDMENT

See under Article 19.

21. CLEARANCE LIST relating to the transaction for the purchase or sale of bullion or specie submitted to the Clearing House of a Bullion Association.	The sum of duties payable under Article 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transaction or parts thereof.

GUJARAT AMENDMENT

See under Article 19.

22. CLEARANCE LIST relating to the transaction for the purchase or sale of oil-seeds submitted to the Clearing House of an Oil-seeds Association.	The sum of duties payable under Article 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transaction or parts thereof.

GUJARAT AMENDMENT

See under Article 19.

23. CLEARANCE LIST relating to the transaction for the purchase or sale of yarn of any kind, non-mineral oils or spices of any kind.	The sum of duties payable under Article 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transactions or parts thereof.

GUJARAT AMENDMENT

See under Article 19.

24. COMPOSITION DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of licence for the benefit of his creditors.	Thirty rupees.
*25. (a) CONVEYANCE other than a conveyance specified in clause (b), not be-	

Description of Instrument (1)	Proper Stamp Duty (2)
ing a transfer charged or exempted under Article No. 59—	
when the amount or value of the consideration for such conveyance does not exceed Rs. 50 ..	Rs. nP. 1.50
where it exceeds Rs. 50 but does not exceed Rs. 100 ..	3.00
where it exceeds Rs. 100 but does not exceed Rs. 200;	6.00
where it exceeds Rs. 200 but does not exceed Rs. 300;	9.00.
where it exceeds Rs. 300 but does not exceed Rs. 400;	12.00.
where it exceeds Rs. 400 but does not exceed Rs. 500;	15.00.
where it exceeds Rs. 500 but does not exceed Rs. 600;	18.00.
where it exceeds Rs. 600 but does not exceed Rs. 700;	21.00.
where it exceeds Rs. 700 but does not exceed Rs. 800;	24.00.
where it exceeds Rs. 800 but does not exceed Rs. 900;	27.00.
where it exceeds Rs. 900 but does not exceed Rs. 1,000;	30.00
and for every Rs. 500 or part thereof in excess of Rs. 1,000 but not exceeding Rs. 20,000;	15.00.
for every Rs. 500 or part thereof in excess of Rs. 20,000 but not exceeding Rs. 40,000;	20.00.
for every Rs. 500 or part thereof in excess of Rs. 40,000.	25.00.
Exemption.	
Assignment of copyright by entry made under the Copyright Act, 1957.	

(b) CONVEYANCE (not being a transfer charged or exempted under Art. No. 59) so far as it relates to immovable property situated.	Greater Bombay and that part of Thana taluka adjoining G. B. which is encircled by the Thana — Bassein Creek.	In other cities and towns having a population of more than 2 lakhs which the State Government may, by notification in the Official Gazette specify—	In cities and towns having a population of 50,000, and above but not more than 2 lakhs which the State Govt. may, by notification in the official Gazette specify—
	Rs. P.	Rs. P.	Rs. P.
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 200;	20.00	12.00	10.00
where it exceeds Rs. 200 but does not exceed Rs. 300;	30.00	18.00	15.00
where it exceeds Rs. 300 but does not exceed Rs. 400;	40.00	24.00	20.00
where it exceeds Rs. 400 but does not exceed Rs. 500;	50.00	30.00	25.00
where it exceeds Rs. 500 but does not exceed Rs. 600;	60.00	36.00	30.00
where it exceeds Rs. 600 but does not exceed Rs. 700;	70.00	42.00	35.00
where it exceeds Rs. 700 but does not exceed Rs. 800;	80.00	48.00	40.00
where it exceeds Rs. 800 but does not exceed Rs. 900;	90.00	54.00	45.00
where it exceeds Rs. 900 but does not exceed Rs. 1,000;	100.00	60.00	50.00

Description of Instrument (1)	Proper Stamp Duty (2)		
and for every Rs. 500 or part thereof in excess of Rs. 1,000, but not exceeding Rs. 50,000;	50.00	For every Rs. 500 or part thereof in excess of Rs. 1000 but not exceeding Rs. 40,000. 30.00	For every Rs. 500 or part thereof in excess of Rs. 1000, but not exceeding Rs. 30,000. 25.00
for every Rs. 500 or part thereof in excess of Rs. 50,000 but not exceeding Rs. 1 lakh;	60.00	For every Rs., 500 or part thereof in excess of Rs. 40,000 but not exceeding Rs. 80,000. 40.00	For every Rs. 500 or part thereof in excess of Rs. 30,000 but not exceeding Rs. 60,000. 30.00
for every Rs. 500 or part thereof in excess of Rs. 1 lakh.	75.00	For every Rs. 500 or part thereof in excess of Rs. 80,000. 50.00	For every Rs. 500 or part thereof in excess of Rs. 60,000. 40.00
Explanation.—For the purposes of this article, 'population' means population as ascertained at the last preceding census of which the relevant figures, whether provisional or final, are published.]			

[*] Substituted by Maha. Act 29 of 1972, S. 2 (6) (1-10-1972).

GUJARAT AMENDMENT

(i) Clause (a) Col. 1, as in the Act; but in Col. 2 entries against respective groups are 75 paise; Rs. 1.50; 3.00; 6.75; 9.00; 11.25; 13.50; 15.75; 17.00; 20.25; 22.50. There is no further provision than for every Rs. 500 or part thereof exceeding Rs. 1,000, Rs. 11.25 in Gujarat;

(ii) for clause (b), substitute—

(b) Conveyance (not being a transfer charged or exempted under Art. No. 59) so far as it relates to immovable property situate within an urban area—

	Rs. p.
where the amount or value of the consideration for such conveyance does not exceed Rs. 100;	6.00
where it exceeds Rs. 100 but does not exceed Rs. 200;	12.00
where it exceeds Rs. 200 but does not exceed Rs. 300;	18.00
where it exceeds Rs. 300 but does not exceed Rs. 400;	24.00
where it exceeds Rs. 400 but does not exceed Rs. 600;	36.00
where it exceeds Rs. 600 but does not exceed Rs. 800;	48.00
where it exceeds Rs. 800 but does not exceed Rs. 1,000;	60.00
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	30.00

Explanation.—For the purposes of clause (b) of this article, "urban area" means any area which is for the time being—

(i) within the limits of a city as defined in clause (8) of section 2 of the Bombay Provincial Municipal Corporation Act, 1949, a municipal borough, a notified area, nagar or cantonment; or

(ii) within the limits of a village or gram the population of which, as ascertained at the last preceding census is 10,000 or more—Guj.

Description of Instrument (1)	Proper Stamp Duty (2)
Act 2 of 1970, S. 2 (iii) (13-3-1970). (iii) In its application to the State of Gujarat the stamp duty on every Conveyance chargeable under Art. 25 and on every other instrument chargeable with the same duty as a conveyance is to be increased by ten per cent.—Guj. Act VI of 1961, S. 2 and Sch. (1-4-1961).	
26. COPY OR EXTRACT, certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees— (i) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee eight annas; (ii) in any other case.	One rupee and fifty naye paise. Three rupees.
Exemptions (a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose. (b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.	
27. COUNTERPART OR DUPLICATE of any instrument chargeable with duty and in respect of which the proper duty has been paid,— (a) if the duty with which the original instrument is chargeable does not exceed three rupees; (b) in any other case.	The same duty as is payable on the original. Three rupees.
Exemption. Counterpart of any lease granted to a cultivator when such lease is exempted from duty.	
28. CUSTOMS BOND OR EXCISE BOND, that is to say, any bond given pursuant to the provisions of any law for the time being in force or to the directions of any officer of Customs or Excise for, or in respect of, any of the duties of Customs or Excise or for preventing frauds or evasions thereof or for any other matter or thing relating thereto,— (a) where the amount does not exceed Rs. 1,000; (b) in any other case.	The same duty as a Bond (No. 13) for such amount. Twenty rupees.*

[*] Substituted for 'Rs. 15' by Maha. Act 29 of 1972, S. 2 (7) (1-10-1972).

GUJARAT AMENDMENT

In entry (b) read "Fifteen rupees".—Guj. A.L.O., 1960.

DECLARATION OF ANY TRUST, See TRUST (No. 61).	
29. DELIVERY ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or the holder thereof, to the delivery of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, such instrument be-	One rupee.*

Description of Instrument (1)	Proper Stamp Duty (2)
ing signed by or on behalf of the owner of such goods upon the sale or transfer of the property therein when such goods exceed in value twenty rupees.	
DEPOSIT OF TITLE DEEDS, See Agreement relating to Deposit of Title Deeds, Pawn or Pledge (No. 6).	
DISSOLUTION OF PARTNERSHIP, See Partnership (No. 47).	

[*] Substituted by Maha. Act 31 of 1962, S. 3 (7) (15-9-1962).

GUJARAT AMENDMENT

Same—Guj. Act 18 of 1963, S. 3 (6) (22-4-1963).

30. DIVORCE — Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage.	Ten rupees.
DOWER — Instrument of, See Settlement (No. 55).	
DUPLICATE, See Counterpart (No. 27).	

31. [Omitted by Maha. Act 10 of 1965, S. 4 (3-2-1965).]

GUJARAT AMENDMENT

31. ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT (under the Indian Bar Councils Act, 1926, or) in exercise of powers conferred on such Court by Letters Patent.	Seven hundred and fifty rupees.
Exemption.	
Entry of an Advocate, Vakil or Attorney on the roll of any High Court when he has previously been enrolled in a High Court.	
32. EXCHANGE OF PROPERTY — Instrument of—	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Art. 25 for a consideration equal to the value of the property of greatest value as set forth in such instrument.

GUJARAT AMENDMENT

Delete words 'as set forth' in such instrument.—Guj. Act 2 of 1970, Section 2 (iv) (13-3-1970).

EXCISE BOND, See Customs Bond or Excise Bond (No. 28).	
33. FURTHER CHARGE — Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 40 (that is, with possession);	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Art. 25 for a consideration equal to the amount of the further charge secured by such instrument.
(b) when such mortgage is one of the description referred to in clause (b) of Article No. 40 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Art 25 for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(ii) if possession is not so given.	The same duty as a Bond (No. 13) for the amount of further charge secured by such instrument.

Description of Instrument (1)	Proper Stamp Duty (2)
34. GIFT, Instrument of — Not being a Settlement (No. 55) or Will or Transfer (No. 59).	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the value of the property which is the subject-matter of the gift: Provided that where an instrument of gift contains any provisions for the revocation of the gift, the value of the property which is the subject-matter of the gift shall, for the purposes of duty, be determined as if no such provision were contained in the instrument.
HIRING AGREEMENT or agreement for service. See Agreement (No. 5).	
35. INDEMNITY BOND ..	The same duty as a Security Bond (No. 54) for the same amount.
INSPECTORSHIP DEED, See Composition Deed (No. 24).	
°36. LEASE, including an under-lease or sub-lease and any agreement to let or sub-let—	
(a) where by such lease the rent is fixed and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year;	The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not more than three years;	The same duty as a Bond (No. 13) for the amount or value of the average annual rent reserved.
(iii) where the lease purports to be for a term in excess of three years but not more than ten years;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount or value of the average annual rent reserved.
(iv) where the lease purports to be for a term in excess of ten years but not more than ninety-eight years;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to twice the amount or value of the average annual rent reserved.
(v) where the lease purports to be for a term in excess of ninety-eight years;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be of Article 25 for a consideration equal to thrice the amount or value of the average annual rent reserved.
(vi) where the lease purports to be in perpetuity;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(vii) where the lease does not purport to be for any definite term;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.
(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount or value of such fine

Description of Instrument (1)	Proper Stamp Duty (2)
	or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered: Provided that in any case where an agreement to lease is stamped with ad valorem stamp required for a lease and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed three rupees.
Explanation I.—Rent paid in advance shall be deemed to be premium or money advanced within the meaning of this article unless it is specifically provided in the lease that rent paid in advance will be set off towards the last instalment or instalments of rent. **Explanation II.**—When a lessee undertakes to pay any recurring charge, such as Government revenue, landlord's share of cesses, or the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee, shall be deemed to be part of the rent.	

[*] Substituted by Maha. Act 31 of 1962, S. 3 (8) (15-9-1962).

GUJARAT AMENDMENT

Entry 36 is the same in Gujarat as in Maharashtra with following differences:—

(a) Clauses (i) to (iii) same; (iv) and (v) are as follows:—

(iv) where the lease purports to be for a term in excess of 10 years but not more than 30 years;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to twice the amount or value of the average annual rent reserved.
(v) where the lease purports to be for a term in excess of thirty years but not more than ninety-eight years;	Except for 'thrice' for 'twice', same as above.

(c) (vi), (vii) and (viii) correspond to (v), (vi) and (vii), respectively, in Maharashtra, with words 'or to be advanced' added after 'money advanced' in clauses (b) and (c) of entry (viii)—Guj. Acts 18 of 1963, S. 3 (7) (22-4-1963) and 2 of 1970, Section 2 (v) (13-3-1970).

37. LETTER OF ALLOTMENT OF SHARES in any company or proposed company, or in respect of any loan to be raised by any company or proposed company. See also Certificate or other Document (No. 17).	Twenty naye paise.

GUJARAT AMENDMENT

For "Letter of Allotment" substitute "Letter of Allotment or Renunciation"—Guj. Act 2 of 1970, Section 2 (vi) (13-3-1970).

LETTER OF GUARANTEE, See Agreement (No. 5).	
38. LETTER OF LICENCE, that is to say, any agreement between a debtor and his creditors, that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Fifteen rupees.
*39. MEMORANDUM OF ASSOCIATION OF A COMPANY—	
(a) if accompanied by articles of association under section 26 of the Companies Act, 1956;	One hundred rupees.

Description of Instrument (1)	Proper Stamp Duty (2)
(b) if not so accompanied ..	The same duty as is leviable on Articles of Association under Article 10 according to the share capital of the company.
Exemption Memorandum of any association not formed for profit and registered under section 25 of the Companies Act, 1956.	

[*] Substituted by Maha. Act 31 of 1962, S. 3 (a) (15-9-19

GUJARAT AMENDMENT

Same—Guj. Act 18 of 1963, Section 3 (8) (22-4-1963).

40. MORTGAGE DEED, not being an Agreement relating to Deposit of Title Deeds, Pawn or Pledge (No. 6), Bottomry Bond (No. 14), Mortgage of a Crop No. 41), Respondential Bond (No. 53), or Security Bond (No. 54)—	
(a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for consideration equal to the amount secured by such deed.
(b) when possession is not given or agreed to be given as aforesaid;	The same duty as a Bond (No. 13) for the amount secured by such deed.
Explanation.—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof, is deemed to give possession within the meaning of this article.	
(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose where the principal or primary security is duly stamped for every sum secured not exceeding Rs. 1,000;	One rupee and fifty naye paise.
and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.	One rupee and fifty naye paise.
Exemptions.	
(1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883 or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advances.	
(2) Letter of hypothecation accompanying a bill of exchange.	
41. MORTGAGE OF A CROP, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop whether the crop is or is not in existence at the time of a mortgage—	
(a) when the loan is repayable not more than three months from the date of the instrument, for every sum secured not exceeding Rs. 200;	Twenty naye paise.
and for every Rs. 200 or part thereof secured in excess of Rs. 200;	Twenty naye paise.
(b) when the loan is repayable more than three months but not more than eighteen months from the date of the instrument—	
for every sum secured not exceeding Rs. 100;	Forty naye paise.
and for every Rs. 100 or part thereof secured in excess of Rs. 100.	Forty naye paise.

Description of Instrument (1)	Proper Stamp Duty (2)
42. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry not being a Protest (No. 49) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public. See also Protest of Bill or Note (No. 49).	Three rupees.
43. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—	
(a) of cotton	*⌈Twenty-five naye paise⌉ for every unit of transaction or part thereof.
(b) of bullion or specie	*(a) Ten naye paise for every 10 kg. of silver or part thereof. (b) Forty naye paise for every unit of 1 kg. of gold or part thereof.
(c) of oil-seeds	(c) Seventy-five naye paise for every unit of 250 sovereigns or part thereof. †⌈Such rate not exceeding— (i) twenty naye paise for every 5,000 kg. of oil-seed or part thereof, where the unit is 5,000 kg., or (ii) forty naye paise for every 10,000 kg. of oil-seeds or part thereof, where the unit is 10,000 kg. or (iii) one rupee for every 25,000 kg. of oil-seeds or part thereof, where the unit is 25,000 kg., as may be specified by the State Government by notification in the Official Gazette.⌉
(d) of yarn of any kind, non-mineral oils or spices of any kind.	Such rate not exceeding *⌈twenty-five naye paise⌉ for every Rs. 2,500 or part thereof of the value of yarn of any kind, non-mineral oils or spices of any kind, as may be specified by the State Government by notification in the Official Gazette.
(e) of any other goods exceeding in value twenty rupees.	Fifty naye paise.*
(f) of any share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature exceeding in value twenty rupees, not being a Government security.	Fifteen naye paise for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale, as the case may be.
(g) of a Government security.	Subject to a maximum of *⌈forty rupees twenty-five naye paise⌉ for every 10,000 rupees or part thereof of the value of the security at the time of its purchase or sale, as the case may be.
Exemptions (1) Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of a Government security or a share, scrip, stock; bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporated company or other body corporate, an entry relating to which is required to be made in clearance list described in Article 19. (2) Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of cotton on account of such principal, an entry relating to which is required to be made in a clearance list described in Article 20. (3) Note or Memorandum sent by a Broker or Agent to his principal intimating the	

Description of Instrument (1)	Proper Stamp Duty (2)
purchase or sale of bullion or specie on account of such principal, an entry relating to which is required to be made in a clearance list described in Article 21. (4) Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of oil seeds on account of such principal, an entry relating to which is required to be made in a clearance list described in Article 22. (5) Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of yarn of any kind. non-mineral oils or spices of any kind on account of such principal an entry relating to which is required to be made in a clearance list described in Article 23. Explanation.—For the purposes of entry (a) of this Article, unit of transaction means the quantity of cotton weighing *[approximately 4,500 kilograms].	

[*] Substituted by Maha. Act 31 of 1962, Section 3 (10) (15-9-1962).

[†] Substituted by Bom. Act XCV of 1958, Section 7.

GUJARAT AMENDMENT

(i) In its application to the State of Gujarat the stamp duty on every note or memorandum chargeable under Art. 43 is to be increased by ten per cent.—Guj. Act VI of 1961, Section 2 and Schedule (1-4-1961).

(ii) (a) In entry (a) of Art. 43, for the word 'cotton' in Col. 1, substitute the words "cotton including cotton pods or kapas (unginned cotton)".

(b) In entry (f), for words beginning with "Twenty naye paise" and ending with words "as the case may be", substitute the following:—

"(1) In the case of forward contracts relating to the purchase or sale of securities thirty-five naye paise for every Rs. 5,000 or part thereof of the value of the security at the time of its purchase or sale, as the case may be.

(2) In any other case twenty naye paise for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale, as the case may be."—Guj. Act 46 of 1963, Section 2 (2) (8-11-1963).

(c) (i) Amendments in entries (a), (c), (e) and (g) and Explanation same as in Maharashtra.

(ii) for (d) substitute as follows:—

"(1) In the case of yarn and spices such rate not exceeding 25 np. for every Rs. 2,500 or part thereof of the value of yarn of any kind or spices of any kind as may be specified by the State Government by notification in the Official Gazette.

(2) In the case of groundnut oil or any other non-mineral oil such rate not exceeding—

(i) ten naye paise for every unit of 100 tins of such oil or part thereof, where the unit of transaction is 100 tins each containing a quantity of oil weighing approximately 16.50 kg., or

(ii) 20 naye paise for every 5,000 kg. of such oil or part thereof, where the uniit is 5,000 kg., or

(iii) 50 naye paise for every 10,000 kg. of such oil or part thereof, where the unit is 10,000 kg., or

(iv) one rupee and twenty-five naye paise for every 25,000 kg. of such oil or part thereof, where the unit is 25,000 kg.,

as may be specified by the State Government by notification in the Official Gazette."

(iii) In entry (f), for "fifteen naye paise", substitute "twenty naye paise".—Guj. Act 18 of 1963, Section 3 (a) (22-4-1963).

Description of Instrument (1)	Proper Stamp Duty (2)
44. NOTE OF PROTEST BY THE MASTER OF A SHIP—See also Protest by the Master of a Ship (No. 50).	One rupee and fifty naye paise.
45. ORDER FOR THE PAYMENT OF MONEY, not being a Bill of Exchange within the meaning of the Indian Stamp Act, 1899,—	
(a) where payable otherwise than on demand but not more than one year after date or sight,—	

	If drawn singly.	If drawn in set of two for each part of the set.	If drawn in set of three for each part of the set.
	Rs. P.	Rs. P.	Rs. P.
if the amount of the bill or note does not exceed Rs. 200;	0.35	0.20	0.10
if it exceeds Rs. 200 and does not exceed Rs. 400;	0.65	0.35	0.20
if it exceeds Rs. 400 and does not exceed Rs. 600;	0.95	0.60	0.35
if it exceeds Rs. 600 and does not exceed 800;	1.15	0.65	0.40
if it exceeds Rs. 800 and does not exceed Rs. 1,000;	1.35	0.75	0.60
if it exceeds Rs. 1,000 and does not exceed Rs. 1,200;	1.70	0.95	0.65
if it exceeds Rs. 1,200 and does not exceed Rs. 1,600;	2.25	1.15	0.75
if it exceeds Rs. 1,600 and does not exceed Rs. 2,500;	3.40	1.70	1.15
if it exceeds Rs. 2,500 and does not exceed Rs. 5,000;	6.75	3.40	2.25
if it exceeds Rs. 5,000 and does not exceed Rs. 7,500;	10.15	5.15	3.40
if it exceeds Rs. 7,500 and does not exceed Rs. 10,000;	13.50	6.75	4.50
if it exceeds Rs. 10,000 and does not exceed Rs. 15,000;	20.25	10.15	6.75
if it exceeds Rs. 15,000 and does not exceed Rs. 20,000;	27.00	13.50	9.00
if it exceeds Rs. 20,000 and does not exceed Rs. 25,000;	33.75	16.90	11.25
if it exceed Rs. 25,000 and does not exceed Rs. 30,000;	40.50	20.25	13.50
and for every additional Rupees 10,000 or part thereof in excess of Rs. 30,000;	13.50	6.75	4.50

(b) where payable at more than one year after date or sight.	The same duty as a Bond (No. 13) for the same amount.
46. PARTITION — Instrument of [as defined by section 2 (m)].	The same duty as a Bond (No. 13) for the amount of the value of the separated share or shares of the property. N. B.—The largest share remaining after the property is partitioned (or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated: Provided always that— (a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than *[three rupees].

Description of Instrument (1)	Proper Stamp Duty (2)
	(b) where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue; (c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition, in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed *[three rupees].

[*] Substituted by Maha. Act 31 of 1962, Section 3 (11) (15-9-1962).

GUJARAT AMENDMENT

Same—See Guj. Act 18 of 1963, S. 3 (10) (22-4-1963).

47. PARTNERSHIP—	
A—Instrument of—	
(a) where the capital of the partnership does not exceed Rs. 500;	Fifty rupees.*
(b) in any other case ..	One hundred rupees.*
B—Dissolution of—	Thirty rupees.*

[*] Substituted by Maha. Act 31 of 1962, Section 3 (12) (15-9-1962).

GUJARAT AMENDMENT

Same—Guj. Act 18 of 1933, S. 3 (11) (22-4-1963).

PAWN OR PLEDGE. See AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE (No. 6).	
48. POWER OF ATTORNEY [as defined by section 2 (r)], not being a Proxy—	
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents;	One rupee and fifty naye paise.
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882;	One rupee and fifty naye paise.
(c) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a);	Three rupees.
(d) when authorising not more than five persons to act jointly and severally in more than one transaction or generally;	Fifteen rupees.
(e) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;	Thirty rupees.
(f) when given for consideration and authorising the attorney to sell any immovable property;	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be)* of Article 25 for the amount of the consideration.
(g) in any other case ...	Three rupees for each person authorised. N. B.—The term "registration" includes every operation incidental to registration under the Indian Registration Act, 1908.

Description of Instrument (1)	Proper Stamp Duty (2)
Explanation.—For the purposes of this article more persons than one when belonging to the same firm shall be deemed to be one person.	

[°] Inserted by Maha. Act 29 of 1972, Section 2 (8) (1-10-1972).

49. PROTEST OF BILL, OR NOTE, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a Bill of Exchange or Promissory Note.	Three rupees.
50. PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such. See also Note of Protest by the Master of a Ship (No. 44).	Three rupees.
51. RECONVEYANCE OF MORTGAGED PROPERTY— (a) if the consideration for which the property was mortgaged does not exceed Rs.1,000; (b) in any other case ..	The same duty as a Bond (No. 13) for the amount of such consideration as set forth in the reconveyance. Twenty rupees.°

[°] Substituted for "fifteen rupees" by Maha. Act 29 of 1972, Section 2 (9) (1-10-1972).

GUJARAT AMENDMENT

Delete 'as set forth in the reconveyance' in Col. 2—Guj. Act 2 of 1970, Section 2 (viii) (13-3-1970).

52. RELEASE, that is to say, any instrument (not being such release as is provided for by section 24) whereby a person renounces a claim upon another person or against any specified property— (a) if the amount or value of the claim does not exceed Rs. 1,000; (b) in any other case ..	The same duty as a Bond (No. 13) for such amount or value as set forth in the release. Twenty rupees.*

[*] Substituted for "15 rupees" by Maha. Act 29 of 1972, S. 2 (10) (1-10-1972).

GUJARAT AMENDMENT

Delete 'as set forth in the release' in Col. 2—Guj. Act 2 of 1970, Section 2 (ix) (13-3-1970).

53. RESPONDENTIA BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bond (No. 13) for the amount of the loan secured.
REVOCATION OF ANY TRUST OR SETTLEMENT. See Settlement (No. 55); Trust (No. 61).	
54. SECURITY BOND OR MORTGAGE DEED executed by way of security for the due execution of an office or to account for money or other property received by virtue thereof or executed by a surety to secure the due performance of a contract— (a) when the amount secured does not exceed Rs. 1,000; (b) in any other case ..	The same duty as a Bond (No. 13) for the amount secured. Twenty rupees.*

Description of Instrument (1)	Proper Stamp Duty (2)
Exemptions Bond or other instrument, when executed— (a) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem; (b) under the rules made by the State Government under Section 76 of the Bombay Irrigation Act, 1879; (c) executed by persons taking advances under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or by their sureties as security for the repayment of such advance; (d) executed by officers of the Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.	
55. SETTLEMENT— A—Instrument of (including a deed of dower)— (i) where the settlement is made for a religious or charitable purpose;	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled.
(ii) in any other case.	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount or value of the property settled: Provided that where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed °[Three rupees]: Provided further that where an instrument of settlement contains any provision for the revocation of the settlement, the amount or value of the property settled shall, for the purposes of duty, be determined as if no such provision were contained in the instrument.
Exemption Deed of dower executed on the occasion of a marriage between Muhammadans.	
B.—Revocation of— (i) in respect of settlement described in A (i) above;	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property concerned as set forth in the instrument of revocation but not exceeding †[twenty rupees].
(ii) in respect of settlement described in A (ii) above.	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25 for a consideration equal to the amount or value of the property concerned as set forth in the instrument of revocation but not exceeding °[twenty rupees].

[°] Substituted for 'Fifteen rupees' by Maha. Act 29 of 1972, Section 2 (11) (1-10-1972).

[°] Substituted for "1.50 nP." by Maha. Act 31 of 1962, Section 3 (13) (15-9-1962).

[†] Substituted for "fifteen rupees" by Maha. Act 29 of 1972, Section 2 (12) (1-10-1972).

Description of Instrument (1)	Proper Stamp Duty (2)
GUJARAT AMENDMENT	
In Art. 55, in entry A (ii), in the first proviso, for "one rupee and fifty naye paise", substitute "three rupees".—Guj. Act 18 of 1963, Section 3 (12) (22-4-1963).	
56. SHARE WARRANTS to bearer issued under the Companies Act, 1956.	Where the amount of the consideration equal to the nominal amount of the share specified in the warrant does not exceed Rs. 50. 1.15 Where it exceeds Rs. 50 but does not exceed Rs. 100. 2.25 Where it exceeds Rs. 100 but does not exceed Rs. 200. 4.50 Where it exceeds Rs. 200 but does not exceed Rs. 300. 10.15 Where it exceeds Rs. 300 but does not exceed Rs. 400. 13.15 Where it exceeds Rs. 400 but does not exceed Rs. 500. 16.90 Where it exceeds Rs. 500 but does not exceed Rs. 600. 20.25 Where it exceeds Rs. 600 but does not exceed Rs. 700. 23.65 Where it exceeds Rs. 700 but does not exceed Rs. 800. 27.00 Where it exceeds Rs. 800 but does not exceed Rs. 900. 30.40 Where it exceeds Rs. 900 but does not exceed Rs. 1,000. 33.75 And for every Rs. 500 or part thereof in excess of Rs. 1,000. 16.90
Exemption Share warrant when issued by a company in pursuance of the provisions of section 114 of the Companies Act, 1956, to have effect only upon payment as composition for that duty, to the Collector of Stamp Revenue, of— (a) one and a half per centum of the whole subscribed capital of the company, or (b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital . . One and a half per centum of the additional capital so issued. SCRIP. See Certificate (No. 17).	
57. SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel.	Ten naye paise.
58. SURRENDER OF LEASE— (a) when the duty with which the lease is chargeable does not exceed ten rupees; (b) in any other case.	The duty with which such lease is chargeable. Ten rupees.
Exemption Surrender of lease, when such lease is exempted from duty.	
59. TRANSFER (whether with or without consideration)— (a) of debentures, being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8 of the Indian Stamp Act, 1899; **Explanation.**—For the purposes of this clause, the term 'debenture' includes debenture stock; (b) of any interest secured by bond, mortgage deed or policy of insurance;	Seventy-five naye paise for every Rs. 100 or part thereof of the face amount of the debenture. The same duty as a Bond (No. 13) for such amount or value of the interest as set forth

Description of Instrument (1)	Proper Stamp Duty (2)
	in the transfer subject to a maximum of *[twenty rupees].
(c) of any property under the Administrator-General's Act, 1913, section 25;	Fifteen rupees.
(d) of any trust property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	The same duty as a Bond (No. 13) on the market value of the property held on trust subject to a maximum of *[twenty rupees].
Exemptions	
Transfers by endorsement— (a) of a bill of exchange, cheque or promissory note; (b) of a bill of lading, delivery order, warrant for goods or other mercantile document of title to goods; (c) of a policy of insurance; (d) of securities of the Central Government.	

[*] Substituted for "fifteen rupees" by Maha. Act 29 of 1972, Section 2 (13) (1-10-1972).

60. TRANSFER OF LEASE by way of assignment and not by way of under-lease.	The same duty as is leviable on a conveyance under clause (a) or (b), as the case may be, of Article 25, for a consideration equal to the amount of consideration for the transfer.
Exemption	
Transfer of any lease exempt from duty.	
61. TRUST—	
A.—Declaration of — of, or concerning, any property when made by any writing not being a Will.	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding *[thirty rupees].
B.—Revocation of — of, or concerning, any property when made by any instrument other than a Will.	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding *[twenty rupees].

[*] Substituted by Maha. Act 29 of 1972, Section 2 (14) (1-10-1972).

GUJARAT AMENDMENT

In Art 61, in Col. 2, for the words "property concerned as set forth in the instrument", substitute the words "property which is the subject-matter of the trust".— Guj. Act 2 of 1970, Section 2 (x) (13-3-1970).

See also Settlement (No. 55).	
VALUATION. See Appraisement (No. 8).	
* * Omitted by Maha. Act 10 of 1965, Section 4 (3-2-1965).	
VAKIL. See Entry as a Vakil (No. 31).	
62. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	Seventy-five naye paise.

SCHEDULE II

ENACTMENTS REPEALED

(See Section 76)

Year	No.	Enactments.	Extent of Repeal.
1	2	3	4
1899	II	The Indian Stamp Act, 1899, in its application to the pre-Reorganisation State of Bombay, excluding the transferred	The whole except in so far as it relates to documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution of India.

Year	No.	Enactments.	Extent of Repeal.
1	2	3	4
		territories and to the Vidarbha Region and the Kutch Area of the State of Bombay.	
1899	II	The Indian Stamp Act, 1899, as applied to the Saurashtra Area of the State of Bombay.	The whole except in so far as it relates to documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution of India.
1331 Fasli.	IV	The Hyderabad Stamp Act, 1331 F.	The whole except in so far as it relates to documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution of India.
1932	II	The Bombay Finance Act, 1932.	Parts IV and V containing sections 15, 16, 17, 18 and 19.
1943	XIV	The Bombay Increase of Stamp Duties Act, 1943.	The whole.

[THE] MYSORE STAMP ACT, 1957

(MYS. ACT XXXIV OF 1957)

(As amended by Mys. Acts 8 of 1958; 29 of 1962; 17 of 1966 and 12 of 1972; Presi. Act 17 of 1971.)

CONTENTS

CHAPTER I
PRELIMINARY

SECTIONS
1. Short title, extent and commencement.
2. Definitions.

CHAPTER II
STAMP DUTIES

A. Of the Liability of Instruments to Duty.
3. Instruments chargeable with duty.
3-A. Instruments liable to duty in multiples of five naye paise.
3-B. Instruments chargeable with additional duty.
4. Several instruments used in single transaction of sale, mortgage or settlement.
5. Instruments relating to several distinct matters.
6. Instruments coming within several descriptions in Schedule.
7. Payment of higher duty in respect of certain instruments.
8. Bonds or other securities issued on loans.
9. Power to reduce, remit or compound duties.

B. Of Stamps and the mode of using them.
10. Duties how to be paid.
11. Use of adhesive stamps.
12. Cancellation of adhesive stamps.
13. Instruments stamped with impressed stamps, how to be written.
14. Only one instrument to be on same stamp.
15. Instruments written contrary to section 13 or 14 deemed unstamped.
16. Denoting duty.

C. Of the time of stamping Instruments.
17. Instruments executed in the State of Mysore.
18. Instruments executed out of India.
19. Payment of duty on certain instruments liable to increased duty in the State of Mysore.

D. Of Valuations for Duty.
20. Conversion of amount expressed in foreign currencies.
21. Stock and marketable securities how to be valued.
22. Effect of statement of rate of exchange or average price.
23. Instruments reserving interest.
24. Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.
25. How transfer in consideration of debt, or subject to future payment, etc., to be charged.
26. Valuation in case of annuity, etc.
27. Stamp where value of subject-matter is indeterminate.
28. Facts affecting duty to be set forth in instrument.
29. Direction as to duty in case of certain conveyances.

E. Duty by whom payable.
30. Duties by whom payable.

CHAPTER III
ADJUDICATION AS TO STAMPS

31. Adjudication as to proper stamp.
32. Certificate by Collector.

CHAPTER IV
INSTRUMENTS NOT DULY STAMPED

33. Examination and impounding of instruments.
34. Instruments not duly stamped inadmissible in evidence, etc.
35. Admission of instrument where not to be questioned.
36. Admission of improperly stamped instruments.
37. Instruments impounded how dealt with.
38. Deputy Commissioner's power to refund penalty paid under sub-section (1) of section 37.
39. Deputy Commissioner's power to stamp instruments impounded.
40. Instruments unduly stamped by accident.
41. Endorsement of instruments on which duty has been paid under section 34, 39 or 40.

SECTIONS
42. Prosecution for offence against stamp law.
43. Persons paying duty or penalty may recover same in certain cases.
44. Power to Revenue authority to refund penalty or excess duty in certain cases.
45. Non-liability for loss of instrument sent under section 37.
46. Recovery of duties and penalties.

CHAPTER V
ALLOWANCES FOR STAMPS IN CERTAIN CASES
47. Allowance for spoiled stamps.
48. Application for relief under section 47 when to be made.
49. Allowance in case of printed forms no longer required by Corporations.
50. Allowance for misused stamps.
51. Allowance for spoiled or misused stamps how to be made.
52. Allowance for stamps not required for use.
52-A. Power of State Government to grant relief.

CHAPTER VI
REFERENCE AND REVISION
53. Control of, and statement of case to, Chief Controlling Revenue authority.
54. Statement of case by Chief Controlling Revenue authority to High Court.
55. Power of High Court to call for further particulars as to case stated.
56. Procedure in disposing of case stated.
57. Statement of case by other Courts to High Court.
58. Revision of certain decisions of Courts regarding the sufficiency of stamps.

CHAPTER VII
CRIMINAL OFFENCES AND PROCEDURE
59. Penalty for executing etc., instrument not duly stamped.
60. Penalty for failure to cancel adhesive stamps.
61. Penalty for omission to comply with provisions of Section 28.
62. Penalty for devices to defraud the revenue.
63. Penalty for breach of rule relating to sale of stamps and for unauthorised sale.
63A. Penalty for contravention of other provisions.
64. Institution and conduct of prosecutions.
65. Jurisdiction of Magistrates.
66. Place of trial.

CHAPTER VIII
SUPPLEMENTAL PROVISIONS
67. Books etc., to be open to inspection.
67A. Procedure of Chief Controlling Revenue Authority and the Deputy Commissioner and rectification of mistakes.
67B. Deputy Commissioner's power to authorise officers to enter premises and inspect certain documents.
68. Power to make rules.
69. Saving as to court-fees.
70. Act to be translated and sold cheaply.
71. Repeal and savings.
72. Application of the Indian Stamp Act, 1899.
SCHEDULE

[THE] MYSORE STAMP ACT, 1957
(MYS. ACT XXXIV OF 1957)

An Act to consolidate and amend the laws relating to Stamps.

Whereas it is expedient to consolidate and amend the laws relating to stamps in the State of Mysore:

Be it enacted by the Mysore State Legislature in the Eighth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Mysore Stamp Act, 1957.

(2) It extends to the whole of the State of Mysore.

(3) It shall come into force on such date° as the State Government may, by notification in the Official Gazette, appoint.

[°] 1-6-1958 is the appointed date.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) "bond" includes—

(i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed or is not performed, as the case may be;

(ii) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(iii) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;

(b) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and as applied to any other instrument chargeable under the law in force in the territories of the State of Mysore when such instrument was executed or, where several persons executed the instrument at different times, first executed;

*[(c) "Chief Controlling Revenue Authority" means the officer appointed by the State Government to be the Commissioner of Stamps for Mysore];

[*] Substituted for "Collector" by Mys. Act 29 of 1962, Section 2 (1-10-1962).

(d) "conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos and which is not otherwise specifically provided for by the Schedule;

*[(dd) "Deputy Commissioner" means the Chief Officer in charge of the revenue administration of a district and includes in respect of such provisions of this Act or rules made thereunder such officer in such area as the State Government may by notification in the Official Gazette specify.]

[*] Inserted by Mys. Act 29 of 1962, S. 2 (1-10-1962).

(e) "duly stamped" as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the territories of the State of Mysore;

(f) "executed" and "execution", used with reference to instruments, means "signed" and "signature";

(g) "Government security" means a Government security as defined in the Public Debt Act, 1944 (Central Act XVIII of 1944);

(h) "impressed stamp" includes—

(i) labels affixed and impressed by the proper officer; and

(ii) stamps embossed or engraved on stamped paper;

(i) "India" means the territory of India excluding the State of Jammu and Kashmir;

(j) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;

*[(k) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes—

(i) a final order for effecting a partition passed by any Revenue authority or any Civil Court,

(ii) an award by an arbitrator directing a partition, and

(iii) when partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.]

[*] Substituted by Mys. Act 29 of 1962, Section 2 (1-10-1962).

(l) "lease" means a lease of immovable property, and includes also—

(i) a patta;

(ii) a kabuliyat or other undertaking in writing not being a counterpart of a lease to cultivate, occupy, or pay or deliver rent for, immovable property;

(iii) any instrument by which tolls of any description are let;

(iv) any writing on an application for a lease intended to signify that the application is granted;

(m) "marketable security" means a security of such a description as to be capable of being sold in any stock market in India;

(n) "mortgage deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one per-

son transfers, or creates, to or in favour of another, a right over or in respect of specified property;

(o) "paper" includes vellum, parchment or any other material on which an instrument may be written;

(p) "power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it;

(q) "settlement" means any non-testamentary disposition in writing, of moveable or immoveable property made—

(i) in consideration of marriage,

(ii) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide or for the purpose of providing for some person dependent on him; or

(iii) for any religious or charitable purpose;

and includes an agreement in writing to make such a disposition, and where any such disposition has not been made in writing, any instrument recording whether by way of declaration of trust or otherwise, the terms of any such disposition.

(2) The Mysore General Clauses Act, 1899, shall apply for the interpretation of this Act, as it applies for the interpretation of a Mysore Act.

CHAPTER II

STAMP DUTIES

A.—Of the Liability of Instruments to Duty.

3. Instruments chargeable with duty.—Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor, respectively, that is to say,—

(a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in the territories of the State of Mysore on or after the commencement of this Act; and

(b) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed out of the State of Mysore on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the territories of the State of Mysore and is received in the territories of the State of Mysore:

Provided that no duty shall be chargeable in respect of—

(1) any instrument executed by, or on behalf of, or in favour of, the *[State Government] in cases where, but for this exemption, the *[State Government] would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1958.

[*] Substituted for "Government" by Mys. Act 17 of 1966, Section 2 (15-11-1966).

[†] Substituted by Mys. Act 29 of 1962, Section 4 (1-10-1962).

*[**3-A. Instruments liable to duty in multiples of five naye paise.**—Notwithstanding anything contained in section 3 and the Schedule or any rule or order published under section 9, the proper duty payable on any instrument shall be computed and determined in multiples of five naye paise:

Provided that, where a scale has been specified for determining the proper duty, the total amount of duty payable on any instrument shall be calculated in accordance with such scale, and where the total amount so calculated includes in addition to any multiple of five naye paise a fraction of five naye paise, such fraction shall be deemed to be five naye paise, and the total amount of duty payable on the instrument shall be determined accordingly.]

[°] Inserted by Mys. Act 29 of 1962, Section 5 (1-10-1962).

*[3-B. **Instruments chargeable with additional duty.**—(1) Every instrument chargeable with duty under section 3 read with the articles of the Schedule shall, in addition to such duty, be chargeable with a duty of ten paise.

(2) The additional duty with which any instrument is chargeable under sub-section (1) shall be paid and such payment shall be indicated on such instruments by means of adhesive stamps bearing such inscription as the State Government may, by order published in the Official Gazette, specify, whether with or without any other design, picture or inscription.

(2) Except as otherwise provided in sub-section (2), the provisions of this Act shall, so far as may be, apply in relation to the additional duty chargeable under sub-section (1) as they apply in relation to the duty chargeable under section 3.]

[*] Inserted by Mys. Act 4 of 1973, Section 2 (19-3-1973).

Note.—This was President Act 17 of 1971.

4. Several instruments used in single transaction of sale, mortgage or settlement.—(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in the Schedule for the conveyance, mortgage, or settlement, and each of the other instruments shall be chargeable with a duty of three rupees instead of the duty (if any) prescribed for it in the Schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purpose of sub-section (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Instruments relating to several distinct matters.—Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Instruments coming within several descriptions in Schedule.—Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in the Schedule shall, where the duties chargeable thereunder are different be chargeable only with the highest of such duties:

Provided that nothing contained in this Act shall render chargeable with duty exceeding *[four rupees and fifty naye paise] a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

[*] Substituted for "three rupees" by Mys. Act 29 of 1962, Section 6 (1-10-1962).

7. Payment of higher duty in respect of certain instruments.—(1) Notwithstanding anything contained in section 4 or 6 or in any other enactments, unless it is proved that the duty chargeable under this Act has beer paid—

(a) on the principal or original instrument, as the case may be, or

(b) in accordance with the provisions of this section,

the duty chargeable on an instrument of sale, mortgage or settlement, other than a principal instrument or on a counterpart, duplicate or copy of any instrument shall, if the principal or original instrument would, when received in the State, have been chargeable under this Act with a higher rate of duty, be the duty with which the principal or original instrument would have been chargeable under section 19.

(2) Notwithstanding anything contained in any enactment for the time being in force, no instrument, counterpart, duplicate or copy chargeable with duty under this section shall be received in evidence unless the duty chargeable under this section has been paid thereon:

Provided that any Court before which any such instrument, duplicate or copy is produced may permit the duty chargeable under this section to be paid thereon and may then receive it in evidence.

8. Bonds or other securities issued on loans.—(1) Notwithstanding anything contained in this Act, any local authority raising a loan under the provisions of any law for the time being in force, by the issue of bonds or other securities, shall, in respect of such loan, be chargeable with a duty of one per centum on the total amount of the bonds or other securities issued by it, and such bonds or other securities need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds or other securities of all outstanding loans of the kind mentioned therein, and all such bonds or other securities shall be valid, whether the same are stamped or not.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

9. Power to reduce, remit or compound duties.—(1) The State Government may, by rule or order published in the Official Gazette,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State of Mysore, if in the opinion of the State Government it is necessary in public interest so to do, the duties with which any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable; and

(b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of bonds or other marketable securities.

*[(2) Every rule or order published under clause (a) of sub-section (1) shall be laid, as soon as may be, after it is published before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or order or both the Houses agree that the rule or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.]

[*] Substituted by Mys. Act 29 of 1962, Section 7 (1-10-1962).

B.—Of stamps and the mode of using them.

10. Duties how to be paid.—(1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained; or

(b) when no such provision is applicable thereto, as the Government may by rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate—

(a) in the case of each kind of instrument—the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used.

11. Use of adhesive stamps.—The following instruments may be stamped with adhesive stamps, namely:—

(a) instruments chargeable °[with a duty not exceeding †[thirty paise];]

‡[(b) certificate of enrolment in the Roll of Advocates maintained by the State Bar Council;]

(c) notarial acts;

(d) instruments mentioned in Article 51 of the Schedule.

[°] Substituted by Mys. Act 29 of 1962, Section 8 (1-10-1962).

[†] Substituted for "fifteen paise" by Mys. Act 12 of 1972, Section 2 (29-12-1972).

[‡] Substituted for former clause (b) by Mys. Act. 29 of 1962, Section 8 (29-12-1962).

12. Cancellation of adhesive stamps.—(1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing or in any other effectual manner.

13. Instruments stamped with impressed stamps how to be written.—Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

14. Only one instrument to be on same stamp.—No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

15. Instruments written contrary to section 13 or 14 deemed unstamped.—Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

16. Denoting duty.—Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last mentioned duty shall, if application is made in writing to the Deputy Commissioner for that purpose, and on production of both the instruments, be denoted upon such first mentioned instrument, by endorsement under the hand of the Deputy Commissioner or in such other manner, if any, as the State Government may by rules prescribe.

C.—Of the time of Stamping Instruments.

17. Instruments executed in the State of Mysore.—All instruments chargeable with duty and executed by any person in the State of Mysore shall be stamped before or at the time of execution.

18. Instruments executed out of India.—(1) Every instrument chargeable with duty executed only out of India may be stamped within three months after it has been first received in the State of Mysore.

(2) Where any such instrument cannot, with reference to the description of stamp, prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the *[Deputy Commissioner] who shall stamp the same, in such manner as the Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

[*] Substituted for 'Collector' by Mys. Act 29 of 1963, S. 3.

19. Payment of duty on certain instruments liable to increased duty in the State of Mysore.—Where any instrument of the nature described in any article in the Schedule and relating to any property situate or to any matter or thing done or to be done in the State of Mysore is executed out of the said State and subsequently received in the said State—

(a) the amount of duty chargeable on such instrument shall be the amount of duty chargeable under the Schedule on a document of the like description executed in the State of Mysore less the amount of duty, if any, already paid on such instrument in any other State in India, and

(b) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the duty chargeable on it under clause (a) of this section, in the manner and at the same time and by the same persons as though such instrument were an instrument received in the State of Mysore for the first time at the time when it became chargeable with the higher duty, and

(c) the provisions contained in clause (b) of the proviso to sub-section (3) of section 32 shall apply to such instrument as if such were an instrument executed or first executed out of India and first received in the State of Mysore when it became chargeable to the higher duty aforesaid, but the provision contained in clause (a) of the said proviso shall not apply thereto.

D.—Of Valuations for Duty.

20. Conversion of amount expressed in foreign currencies.—(1) Where an instrument is chargeable with ad valorem duty in respect of any money expressed in any currency other than that of India, such duty shall be calculated on the value of such money in the currency of India according to the current rate of exchange on the day of the date of the instrument.

(2) The rate of exchange prescribed by the Central Government under sub-section (2) of section 20 of the Indian Stamp Act, 1899 (Central Act II of 1899), shall be deemed to be the current rate of exchange for the conversion of any foreign currency for the purposes of calculating the duty under sub-section (1).

21. Stock and marketable securities how to be valued.—Where an instrument is chargeable with ad valorem duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

22. Effect of statement of rate of exchange or average price.—Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Instruments reserving interest.—Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

24. Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.—(1) Where an instrument—

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Art. 5 of the Schedule.

(2) A release or discharge of any such instrument shall be chargeable with the like duty.

25. How transfer in consideration of debt, or subject to future payment, etc., to be charged.—Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty:

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Art. 15 of the Schedule.

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale:

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) A owes B Rs. 1,000. A sells a property to B the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200. Stamp duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000 less the amount of stamp duty already paid for the mortgage.

26. Valuation in case of annuity, etc.—Where an instrument is executed to secure the payment of annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be,—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(b) where the sum payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

27. Stamp where value of subject-matter is indeterminate.—Where the amount or value of the subject-matter of any instrument chargeable with ad valorem duty cannot be or could not have been ascertained at the date of its execution, or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

Provided that, in the case of the lease of mine in which royalty or a share of the produce is received as the rent, or the part of the rent, it shall be suffi-

cient to have estimated such royalty or the value of such share, for the purpose of stamp duty,—

(a) when the lease has been granted by or on behalf of the Government, at such amount or value as the Deputy Commissioner may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under the lease, or

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or shares, whatever it may be, shall be claimable under such lease:

Provided also that, where proceedings have been taken in respect of any instrument under section 31 or 39 the amount certified by the Deputy Commissioner shall be deemed to be the stamp actually used at the date of execution.

28. Facts affecting duty to be set forth in instrument.—*[(1)] The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

*[(2) In the case of instruments relating to immovable property, chargeable with an ad valorem duty on the value of the property, and not on the value set forth, the instrument shall fully and truly set forth the annual land revenue in the case of revenue-paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act.]

[*] Original section 28 renumbered as sub-section (1) thereof and sub-section (2) inserted thereafter by Mys. Act 17 of 1966, Section 3 (15-11-1966).

29. Direction as to duty in case of certain conveyances.—(1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with ad valorem duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with ad valorem duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof contracts to sell the whole or any part thereof to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with ad valorem duty in respect only of the consideration paid by such sub-purchaser without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with ad valorem duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers.

Provided that the duty on such last mentioned conveyance shall in no case be less than *[two rupees and twenty-five naye paise.]

(5) Where a sub-purchaser takes an actual conveyance of the interests of the person immediately selling to him, which is chargeable with ad valorem duty in

respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or where such duty would exceed †[ten rupees,] with a duty of †[ten rupees.]

[*] Substituted for "one rupee" by Mys. Act 29 of 1962, Section 9 (1-10-1962).

[†] Substituted for "five rupees" ibid.

E.—Duty by whom payable.

30. Duties by whom payable.—In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(a) in the case of any instrument described in any of the following Articles of the Schedule, namely:—

No. 2 (Administration Bond),
No. 6 (Agreement relating to deposit of title deeds, pawn or pledge),
No. 12 (Bond),
No. 13 (Bottomry Bond),
No. 23 (Customs Bond),
No. 27 (Further Charge),
No. 29 (Indemnity Bond),
No. 34 (Mortgage Deed),
No. 45 (Release),
No. 46 (Respondentia Bond),
No. 47 (Security Bond or Mortgage Deed),
No. 48 (Settlement),

No. 52 (a) (Transfer of Debentures, being marketable securities, whether the debenture is liable to duty or not),

No. 52 (b) (Transfer of any interest secured by a bond, mortgage deed or policy of insurance),—

by the person drawing, making or executing such instrument;

(b) in the case of a conveyance (including a reconveyance of mortgaged property) by the grantee; in the case of a lease or agreement to lease — by the lessee or intended lessee;

(c) in the case of a counterpart of lease—by the lessor;

(d) in the case of an instrument of exchange—by the parties in equal shares;

*[(dd) in the case of a certificate of enrolment in the Roll of Advocates maintained by the State Bar Council—by the Advocate enrolled.]

(e) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates; and

(f) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

[*] Inserted by Mys. Act 29 of 1962, Section 10 (1-10-1962): Numbers of articles in clause (a) were also substituted by this Act.

CHAPTER III

ADJUDICATION AS TO STAMPS

31. Adjudication as to proper stamp.—(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Deputy Commissioner, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding *[seven rupees and fifty naye paise] and not less than *[seventy-five naye paise]), as the Deputy Commissioner may in each case direct, the Deputy Commissioner shall determine the duty (if any) with which, in his judgment the instrument is chargeable.

(2) For this purpose the Deputy Commissioner may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application, until such abstract and evidence have been furnished accordingly:

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding except in any enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

[*] Substituted for "five rupees" and "fifty naye paise", respectively, by Mys. Act 29 of 1962, Section 11 (1-10-1962).

32. Certificate by Collector.—(1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and

(a) the Deputy Commissioner determines that it is already fully stamped, or

(b) the duty determined by the Deputy Commissioner under section 31, or such sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Deputy Commissioner shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Deputy Commissioner shall certify in manner aforesaid that such instrument is not so chargeable.

(3) *[Subject to any orders made under Chapter VI, any instrument upon which] an endorsement has been made under this section shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered, as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Deputy Commissioner to endorse—

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution, or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in the State of Mysore; or

(c) any instrument chargeable †[with a duty not exceeding fifteen naye paise] or a mortgage of crop [Article [35]† (a) of the Schedule] chargeable under clause clause (a) or (b) of section 3 with a duty of twenty-five naye paise, when brought to him after the execution thereof, on paper not duly stamped.

[*] Substituted for "Any instrument upon which" by Mys. Act 29 of 1962, Section 12 (1-10-1962).

[†] Substituted for former words and figures, ibid.

CHAPTER IV
INSTRUMENT NOT DULY STAMPED

33. Examination and impounding of instruments.—(1) Every person having by law or consent of parties authority to receive evidence, and every person in

charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State of Mysore when such instrument was executed or first executed:

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, the Government may determine—

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in charge of public offices.

34. Instruments not duly stamped inadmissible in evidence, etc.— No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that—

(a) any such instrument not being an instrument chargeable *[with a duty not exceeding fifteen naye paise] only, or a mortgage of crop [Article 35 *(a) of the Schedule] chargeable under clauses (a) and (b) of section 3 with a duty of twenty-five naye paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Deputy Commissioner as provided by section 32 or any other provision of this Act, †[and such certificate has not been revised in exercise of the powers conferred by the provisions of Chapter VI.]

[*] Substituted for "with the duty of ten naye paise or five naye paise" and "34", respectively, by Mys. Act 29 of 1962, Section 13 (1-10-1962).

[†] Inserted, ibid.

35. Admission of instrument where not to be questioned.—Where an instrument has been admitted in evidence such admission shall not, except as provided

in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

36. **Admission of improperly stamped instruments.**—The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

37. **Instruments impounded how dealt with.**—(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the Deputy Commissioner an authenticated copy of such instrument together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Deputy Commissioner or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Deputy Commissioner.

38. **Deputy Commissioner's power to refund penalty paid under sub-s. (1) of section 37.**—(1) When a copy of an instrument is sent to the Deputy Commissioner under sub-section (1) of section 37, he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Deputy Commissioner may refund the whole penalty so paid.

39. **Collector's power to stamp instruments impounded.**— (1) When the Deputy Commissioner impounds any instrument under Section 33, or receives any instrument sent to him under sub-section (2) of Section 37, not being an instrument chargeable °[with a duty not exceeding fifteen naye paise] only or a mortgage of crop [Article °[35] (a) of the Schedule] chargeable under clause (a) or (b) of Section 3 with a duty of twenty five naye paise he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, (an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Deputy Commissioner may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) †[Subject to any orders made under Chapter VI, every certificate] under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Deputy Commissioner under sub-section (2) of section 37, the Deputy Commissioner shall, when he has dealt with it as provided by this section return it to the impounding officer.

[°] Substituted for "with the duty of ten naye paise or five naye paise" and "34", respectively, by Mys. Act 29 of 1962, Section 14 (1-10-1962).

[†] Substituted for "Every certificate", ibid.

40. **Instruments unduly stamped by accident.**—If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable *[with a

duty not exceeding fifteen naye paise] or a mortgage of crop [Article °[35] (a) of the Schedule] chargeable under clause (a) or (b) of section 3 with a duty of twenty-five naye paise is produced by any person of his own motion before the Deputy Commissioner within one year from the date of its execution or first execution and such person brings to the notice of the Deputy Commissioner the fact that such instrument is not duly stamped and offers to pay to the Deputy Commissioner the amount of the proper duty, or the amount required to make up the same, and the Deputy Commissioner is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and 39, receive such amount and proceed as next hereinafter prescribed.

[°] Substituted for "with a duty of ten naye paise or five naye paise" and "34", respectively, by Mys. Act 29 of 1962, Section 15 (1-10-1962).

41. Endorsement of instruments on which duty has been paid under section 34, 39 or 40.—(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 34, section 39 or section 40, the person admitting such instrument in evidence or the Deputy Commissioner, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 34, shall be so delivered before the expiration of one month from the date of such impounding, or if the Deputy Commissioner has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect Order XIII, Rule 9 of the First Schedule to the Code of Civil Procedure, 1908.

42. Prosecution for offence against stamp law.—The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the law relating to stamps in respect of such instrument:

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

43. Persons paying duty or penalty may recover same in certain cases.—(1) When any duty or penalty has been paid under section 34, section 36, section 39 or section 40, by any person in respect of an instrument, and by agreement or under the provisions of section 30 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order no further proceedings for the recovery of the amount shall be maintainable.

44. Power to Revenue Authority to refund penalty or excess duty in certain cases.—(1) Where any penalty is paid under section 34 or section 39, the Chief

Controlling Revenue Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Controlling Revenue Authority, stamp duty in excess of that which is legally chargeable has been charged and paid under section 34 or section 39, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

*[Provided that with the sanction of the State Government the Chief Controlling Revenue Authority may make the refund after the period specified in sub-section (1) or (2).]

[*] Inserted by Mys. Act 29 of 1962, Section 16 (1-10-1962).

45. Non-liability for loss of instruments sent under section 37.—(1) If any instrument sent to the Collector under sub-section (2) of section 37 is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When any instrument is about to be sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

46. Recovery of duties and penalties.—All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Deputy Commissioner by distress and sale of the moveable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.

CHAPTER V

ALLOWANCES FOR STAMPS IN CERTAIN CASES

47. Allowance for spoiled stamps.—Subject to such rules as may be made by the State Government as to evidence to be required, or the enquiry to be made, the Deputy Commissioner may, on application made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely:—

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

(6) becomes useless in consequence of the transaction intended to be thereby effected, being effected by some other instrument between the same parties and bearing a stamp of not less value;

(7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped:

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation.—The certificate of the Deputy Commissioner under section 32, that the full duty with which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section.

48. Application for relief under section 47 when to be made.—The application for relief under section 47 shall be made within the following periods, that is to say,—

(1) in the cases mentioned in clause (c) (5), within two months of the date of the instrument;

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;

(3) in the case of a stamped paper on which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument or, if it is not dated, within six months after execution thereof by the person by whom it was first or alone executed:

Provided that—

(a) when the spoiled instrument has been for sufficient reasons sent out of the State of Mysore, the application may be made within six months after it has been received back in the State of Mysore;

(b) when, from unavoidable circumstances any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

49. Allowance in case of printed forms no longer required by Corporations.—The Chief Controlling Revenue Authority may, without limit of time, make allowance for stamped papers used for printed forms of instruments by any banker or by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said banker, company or body corporate: provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

50. Allowance for misused stamps.—

(a) When any person has inadvertently used for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13,

the Deputy Commissioner may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being restamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

51. Allowance for spoiled or misused stamps how to be made.—In any case in which allowance is made for spoiled or misused stamps, the °[Deputy Commissioner] may give in lieu thereof—

(a) other stamps of the same description and value; or

(b) if required and he thinks fit, stamps of any other description to the same amount in value; or

(c) at his discretion the same value in money deducting ten naye paise for each rupee or fraction of a rupee.

[*] Substituted for "Collector" by Mys. Act 29 of 1962, Section 3 (1-10-1962).

52. Allowance for stamps not required for use.—When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the *[Deputy Commissioner] shall repay to such person the value of such stamp or stamps in money, deducting ten naye paise for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the *[Deputy Commissioner's] satisfaction—

(a) that such stamp or stamps were purchased by such person with a bona fide intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next preceding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the *[Deputy Commissioner] may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

[°] Substituted for "Collector" by Mys. Act 29 of 1962, Section 3 (1-10-1962).

*[**52-A. Power of State Government to grant relief.**—Notwithstanding anything in the preceding sections of this Chapter, the State Government, after consultation with the Chief Controlling Revenue Authority, if satisfied that it is just and equitable to grant relief in any case or class of cases,—

(i) other than those to which any of the said sections is applicable; or

(ii) after the period specified in any of the said sections,

may by order direct the grant of such relief as may be specified in the order and the Deputy Commissioner shall dispose of the case or class of cases conformably to such order.]

[*] Inserted by Mys. Act 29 of 1962, Section 17 (1-10-1962).

CHAPTER VI

REFERENCE AND REVISION

53. Control of, and statement of case to, Chief Controlling Revenue Authority.—(1) The powers exercisable by a Deputy Commissioner° under †[any provision of this Act or any rule or order made thereunder] shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

(2) If any Deputy Commissioner° acting under section 31, section 39 or section 40, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case and refer it with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Deputy Commissioner° who shall proceed to assess and charge the duty (if any) in conformity with such decision.

[°] Substituted for "Collector" by Mys. Act 29 of 1962, Section 3 (1-10-1962).

[†] Substituted for "Chapter IV and Chapter V and under clause (a) of the first proviso to section 27", ibid, Section 18 (1-10-1962).

54. Statement of case by Chief Controlling Revenue Authority to High Court.—(1) The Chief Controlling Revenue Authority may state any case referred to it under sub-section (2) of section 53 or otherwise coming to its notice, and refer such case, with its own opinion thereon to the High Court.

(2) Every such case shall be decided by not less than three Judges of the High Court, and in case of difference, the opinion of the majority shall prevail.

55. Power of High Court to call for further particulars as to case stated.—If the High Court is not satisfied that the statements contained in the case are

sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

56. Procedure in disposing of case stated.—(1) The High Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The Court shall send to the Revenue authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue authority shall, on receiving such copy, dispose of the case conformably to such judgment.

57. Statement of case by other Courts to High Court.—(1) If any Court other than the High Court feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 34, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court.

(2) Such Court shall deal with the case as if it had been referred under section 54, and send a copy of its judgment under the seal of the Court and the signature of Registrar to the Chief Controlling Revenue authority and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

58. Revision of certain decisions of Courts regarding the sufficiency of stamps.—(1) When any Court in the exercise of its Civil or Revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under Section 34, the Court to which appeals lie from, or references are made by such first mentioned Court may, of its own motion or on the application of the *Deputy Commissioner take such order into consideration.

(2) If such Court, after such consideration, is of the opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 34, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the *Deputy Commissioner and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The *Deputy Commissioner may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under Section 41, or in Section 42, prosecute any person for any offence against the stamp-law which the Deputy Commissioner° considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (includes duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under Section 34, is paid to the Deputy Commissioner° unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under Section 41.

[°] Substituted for "Collector" by Mys. Act 29 of 1962, Section 3 (1-10-1962).

CHAPTER VII

CRIMINAL OFFENCES AND PROCEDURE

59. **Penalty for executing, etc., instrument not duly stamped.**— (1) Any person executing or signing otherwise than as a witness any instrument chargeable with duty, without the same being duly stamped shall for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under Section 34, Section 39 or Section 58, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

60. **Penalty for failure to cancel adhesive stamp.**— Any person required by Section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

61. **Penalty for omission to comply with provisions of Section 28.**— Any person who, with intent to defraud the Government—

(a) executes any instrument in which all the facts and circumstances required by Section 28 to be set forth in such instrument are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees.

62. **Penalty for devices to defraud the revenue.**— Any person who with intent to defraud the Government of duty, practices or is concerned in any act, contrivance or device not specially punishable under this Act or any other law for the time being in force shall be punishable with fine which may extend to one thousand rupees.

63. **Penalty for breach of rule relating to sale of stamps and for unauthorised sale.**—

(a) any person appointed to sell stamps who disobeys any rule made under section 68, and

(b) any person not so appointed who sells or offers for sale any stamp other than a *[fifteen naye paise, ten naye paise or five naye paise] adhesive stamp,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

[*] Substituted by Mys. Act 29 of 1962, Section 19 (1-10-1962).

*[63-A. **Penalty for contravention of other provisions.**—Any person who wilfully acts in contravention of any of the provisions of this Act in respect of which no other provision has been made in this Chapter, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees.]

[*] Inserted by Mys. Act 17 of 1966, Section 4 (15-11-1966).

64. **Institution and conduct of prosecutions.**—(1) No prosecution in respect of any offence punishable under this Act or any enactment hereby repealed, shall be instituted without the sanction of the Deputy Commissioner* or such other officer as the Government generally or the Deputy Commissioner* specially, authorizes in that behalf.

(2) The Chief Controlling Revenue authority, or any officer generally or specially authorized by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 46.

[*] Substituted for "Collector" by Mys. Act 29 of 1962, Section 3 (1-10-1962).

65. Jurisdiction of Magistrates.—No Magistrate other than a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

66. Place of Trial.—Every such offence committed in respect of any instrument may be tried in any district in which such instrument is found, as well as in any district in which such offence might be tried under the Code of Criminal Procedure, 1898.

CHAPTER VIII

SUPPLEMENTAL PROVISIONS

67. Books, etc., to be open to inspection.—Every public officer having in his custody any registers, books, records, papers, documents or proceedings the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable time permit any person authorized in writing by the Deputy Commissioner to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary without fee or charge.

***[67-A. Procedure of Chief Controlling Revenue Authority and the Deputy Commissioner and rectification of mistakes.**—(1) No order relating to the proper stamp duty payable under this Act shall be made by the Chief Controlling Revenue Authority or the Deputy Commissioner to the prejudice of any person liable to pay such duty, unless a reasonable opportunity to be heard is given to such person.

(2) The State Government, the Chief Controlling Revenue Authority or the Deputy Commissioner may suo motu or on application of any party affected at any time within three years from the date of any order passed by it or him review such order and rectify any mistake, or error apparent from the record:

Provided that no such rectification shall be made to the prejudice of any person unless a reasonable opportunity to be heard is to be given to such person.]

[*] Inserted by Mys. Act 29 of 1962, Section 20 (1-10-1962).

***[67-B. Deputy Commissioner's power to authorise officers to enter premises and inspect certain documents.**—The Deputy Commissioner may, where he has reason to believe that any of the instruments specified in Articles 5 and 37 of the Schedule have not been charged at all or incorrectly charged with duty leviable under this Act, authorise in writing any officer to enter upon any premises where he has reason to believe that any registers, books, records, papers, documents or proceedings relating to or in connection with any such instrument are kept and to inspect them and to take such notes and extracts as such officer deems necessary. Every person having in his custody or maintaining such registers, books, records, papers, documents or proceedings shall at all reasonable times permit the officer authorised by the Deputy Commissioner to inspect them and take the notes and extracts as he may deem necessary.]

[*] Inserted by Mys. Act 17 of 1966, Section 5 (15-11-1966).

68. Power to make rules.—(1) The State Government may by notification in the Official Gazette, make rules° to carry out generally the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may be made for regulating—

(a) the supply and sale of stamps and stamped papers,

(b) the persons by whom alone such sale is to be conducted,

(c) the duties and remuneration of such persons, and

(d) the fines which shall in no case exceed five hundred rupees, to be incurred on breach of any rule:

Provided that such rules shall not restrict the sale of †[fifteen naye paise, ten naye paise or five naye paise] adhesive stamps.

‡[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before expiry of the session in which it is so laid or the session immediately following both the Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[*] For Mysore Stamp Rules, 1958, see Mys. Gaz., 1958, Pt. IV-2-C, p. 238.

[†] Substituted for 'six naye paise or 3 naye paise' by Mys. Act 29 of 1962, S. 21 (1-10-1962).

[‡] Substituted for former sub-section (3), ibid.

69. Saving as to court-fees.—Nothing contained in this Act shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

70. Act to be translated and sold cheaply.—The State Government shall make provision for the sale of a translation of this Act in Kannada and other regional languages at a price not exceeding twenty-five naye paise per copy.

71. Repeal and savings.—The Mysore Stamp Act, 1900 (Mysore Act II of 1900), as in force in the Mysore Area and the Hyderabad Stamp Act, 1331 F. (Hyderabad Act IV of 1331 Fasli), as in force in the Hyderabad Area are hereby repealed:

Provided that such repeal shall not affect—

(a) the previous operation of the said enactments or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued, or incurred under the said enactments;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

72. Application of the Indian Stamp Act, 1899.—(1) The Indian Stamp Act, 1899 (Central Act II of 1899), as in force in the Madras Area, shall, notwithstanding anything contained in any law, extend to the whole of the State of Mysore, and shall remain in force in so far such Act relates to the matter specified in Entry 44 of List III of the Seventh Schedule to the Constitution in respect of documents specified in Entry 91 of List I of the said Schedule.*

(2) Save as provided in sub-section (1), the Indian Stamp Act, 1899 (Central Act II of 1899), as in force in the Bombay Area, Coorg District and the Madras Area, in so far as it relates to the matter specified in Entry 44 of List III of the Seventh Schedule to the Constitution, in respect of documents falling under Entry 63 of List II of the said Schedule is hereby repealed:

Provided that such repeal shall not affect—

(a) the previous operation of the said enactments or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued, or incurred under the said enactments;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

[*] In this connection now see the Central Act XLIII of 1955, S. 8.

SCHEDULE

(As substituted and amended by Mysore Acts 29 of 1962 and 17 of 1966.)

STAMP DUTY ON INSTRUMENTS

Description of Instrument (1)	Proper Stamp Duty (2)
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession: provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.	Fifteen naye paise.
2. ADMINISTRATION BOND including a bond given under section 6 of the Government Savings Banks Act, 1873 (Central Act V of 1873), or section 289, 291, 375 or 376 of the Indian Succession Act, 1925 (Central Act XXXIX of 1925):	
(a) where the amount does not exceed Rs. 1,000;	Three-fourths of duty as a Bond (No. 12) for such amount.
(b) in any other case ..	Twenty-two rupees and fifty naye paise.
3. ADOPTION DEED, that is to say, any instrument (other than a Will), recording an adoption, or conferring or purporting to confer an authority to adopt.	Thirty-three rupees and seventy-five naye paise.
ADVOCATE—See Certificate of Enrolment as an Advocate (No. 17).	
4. AFFIDAVIT, including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing.	Four rupees and fifty naye paise.
Exemptions	
Affidavit or declaration in writing when made—	
(a) as a condition of enlistment to the Armed Forces of the Union;	
(b) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or	
(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.	
*5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—	
(a) if relating to the sale of a bill of exchange;	Fifty naye paise.
(b) if relating to the purchase or sale of a Government security;	Subject to a maximum of forty rupees, twenty naye paise for every Rs. 10,000 or part thereof of the value of the security at the time of its mortgage or sale, as the case may be.
(c) if relating to the purchase or sale of shares, scrips, stocks, bonds, debenture stocks or any other mar-	

Description of Instrument (1)	Proper Stamp Duty (2)
ketable security of a like nature, in or of any incorporated company or other body corporate,—	
(i) when such agreement or memorandum of an agreement is with or through a member or between members of a Stock Exchange recognised under Securities Contracts (Regulation) Act, 1956;	Fifteen paise for every 2,500 rupees or part thereof of the value of the security at the time of its purchase or sale, as the case may be.
(ii) in any other cases.	Fifty paise for every Rs. 2,500 or part thereof of the value of the security at the time of its purchase or sale, as the case may be.
(d) if not otherwise provided for.	Three rupees.
Exemptions	
Agreement or memorandum of agreement— (a) for or relating to the purchase or sale of goods or merchandise exclusively, not being a note or memorandum chargeable under Article 37; (b) made in the form of tenders to the Central Government, for or relating to any loan.	

[°] Substituted by Mys. Act 17 of 1966, S. 6 (15-11-1966).

AGREEMENT TO LEASE—

See Lease (No. 30).

6. AGREEMENT RELATING TO DEPOSIT OF TITLE DEEDS, PAWN OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—

1. the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or

2. the pawn or pledge of movable property where such deposit, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt;

(a) if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement,

	If drawn singly.	If drawn in set of two for each part of the set.	If drawn in set of three for each part of the set.
	Rs. P.	Rs. P.	Rs. P.
(i) When the amount of the loan or debt does not exceed Rs. 200	0.90	0.60	0.30
(ii) When it exceeds Rs. 200 but does not exceed Rs. 400	1.70	0.90	0.60
When it exceeds Rs. 400 but does not exceed Rs. 600	2.55	1.40	0.90
When it exceeds Rs. 600 but does not exceed Rs. 800	3.35	1.70	1.10
When it exceeds Rs. 800 but does not exceed Rs. 1,000	4.20	2.25	1.40
When it exceeds Rs. 1,000 but does not exceed Rs. 1,200	5.10	2.55	1.70
When it exceeds Rs. 1,200 but does not exceed Rs. 1,600	6.75	3.35	2.25

Description of Instrument (1)	Proper Stamp Duty (2)		
	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. P.	Rs. P.	Rs. P.
When it exceeds Rs. 1,600 but does not exceed Rs. 2,500	10.10	5.10	3.35
When it exceeds Rs. 2,500 but does not exceed Rs. 5,000	20.25	10.10	6.75
(iii) When it exceeds Rs. 5,000 but does not exceed Rs. 7,500	30.35	15.20	10.10
When it exceeds Rs. 7,500 but does not exceed Rs. 10,000	40.50	20.25	13.50
When it exceeds Rs. 10,000 but does not exceed Rs. 15,000	60.75	30.35	20.25
When it exceeds Rs. 15,000 but does not exceed Rs. 20,000	81.00	40.50	27.00
When it exceeds Rs. 20,000 but does not exceed Rs. 25,000	101.25	50.60	33.75
When it exceeds Rs. 25,000 but does not exceed Rs. 30,000	121.50	60.75	40.50
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000	40.50	20.25	13.50
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable on a loan or debt under clause (a) (i) or clause (a) (ii) or clause (a) (iii) for the amount secured.		
Exemption			
Instrument of pawn or pledge of goods if unattested.			
7. APPOINTMENT IN EXECUTION OF A POWER, whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will.	Fifty-six rupees and twenty-five naye paise.		
8. APPRAISEMENT OR VALUATION made otherwise than under an order of the Court in the course of a suit—			
(a) where the amount does not exceed Rs. 1,000;	The same duty as a Bottomry Bond (No. 13) for such amount.		
(b) in any other case ..	Twenty-two rupees and fifty naye paise.		
Exemptions			
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.			
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.			
9. APPRENTICESHIP DEED, including every writing relating to the service or tuition of any apprentice, clerk or servant placed with any master to learn any profession, trade or employment.	Eleven rupees and twenty-five naye paise.		
Exemption			
Instruments of apprenticeship by which a person is apprenticed by, or at the charge of, any public charity.			
10. ARTICLES OF ASSOCIATION OF A COMPANY.	One hundred and fifty rupees.		
Exemption			
Articles of any association not formed for profit and registered under Section 25 of the Companies Act, 1956.			
See also Memorandum of Association of a Company (No. 33).			
ASSIGNMENT—See Conveyance (No. 20), Transfer (No. 52), and Transfer of Lease (No. 53), as the case may be.			

Description of Instrument (1)	Proper Stamp Duty (2)
AUTHORITY to ADOPT—See Adoption Deed (No. 3).	
11. AWARD, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) where the amount or value of the property to which the award relates *[* * *], does not exceed Rs. 1,000;	The same duty as a Bottomry Bond (No. 13) for such amount.
(b) if it exceeds Rs. 1,000 but does not exceed Rs. 5,000;	Thirty rupees.
and for every additional Rs. 1,000 or part thereof in excess of Rs. 5,000.	One rupee and fifty naye Paise.
[*] Words 'as set forth in such award' omitted by Mys. Act 17 of 1966, Section 6 (2) (15-11-1966).	
12. BOND, as defined by Section 2 (1) (a), not being otherwise provided for by this Act, or by the Mysore Court-fees and Suits Valuation Act, 1958—	
	Rs. nP.
where the amount or value secured does not exceed Rs. 10;	0.35
where it exceeds Rs. 10 and does not exceed Rs. 50;	0.75
where it exceeds Rs. 50 and does not exceed Rs. 100;	1.50
where it exceeds Rs. 100 and does not exceed Rs. 200;	3.75
where it exceeds Rs. 200 and does not exceed Rs. 300	5.60
where it exceeds Rs. 300 and does not exceed Rs. 400	7.50
where it exceeds Rs. 400 and does not exceed Rs. 500	9.35
where it exceeds Rs. 500 and does not exceed Rs. 600;	13.50
where it exceeds Rs. 600 and does not exceed Rs. 700;	15.75
where it exceeds Rs. 700 and does not exceed Rs. 800;	18.00
where it exceeds Rs. 800 and does not exceed Rs. 900;	20.25
where it exceeds Rs. 900 and does not exceed Rs. 1,000;	22.50
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	11.25
See Administration Bond (No. 2), Bottomry Bond (No. 13), Customs Bond (No. 23), Indemnity Bond (No. 29), Respondentia Bond (No. 46), Security Bond (No. 47).	
Exemption	
Bond, when executed by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility, shall not be less than a specified sum per mensem.	
13. BOTTOMRY BOND, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage—	
	Rs. nP.
where the amount or value secured does not exceed Rs. 10;	0.60

Description of Instrument (1)	Proper Stamp Duty (2)
	Rs. nP.
where it exceeds Rs. 10 and does not exceed Rs. 50;	1.10
where it exceeds Rs. 50 and does not exceed Rs. 100;	2.25.
where it exceeds Rs. 100 and does not exceed Rs. 200;	4.50
where it exceeds Rs. 200 and does not exceed Rs. 300;	6.75
where it exceeds Rs. 300 and does not exceed Rs. 400;	9.00
where it exceeds Rs. 400 and does not exceed Rs. 500;	11.25
where it exceeds Rs. 500 and does not exceed Rs. 600;	13.50
where it exceeds Rs. 600 and does not exceed Rs. 700;	15.75
where it exceeds Rs. 700 and does not exceed Rs. 800;	18.00
where it exceeds Rs. 800 and does not exceed Rs. 900;	20.25
where it exceeds Rs. 900 and does not exceed Rs. 1,000;	22.50
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	11.25
14. CANCELLATION — Instrument of — (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.	Twenty rupees fifty naye paise.'
See also Release (No. 45), Revocation of Settlement (No. 48-B), Surrender of Lease (No. 51), Revocation of Trust (No. 54-B).	
15. CERTIFICATE OF SALE.—(In respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public auction by a Court, or Tribunal, or Officer of Government or by any other authority under any enactment—	
(a) where the purchase money does not exceed Rs. 10;	Sixty naye paise.
(b) where the purchase money exceeds Rs. 10 but does not exceed Rs. 25;	One rupee and ten naye paise.
(c) in any other case ..	The same duty as a Conveyance (No. 20) for a consideration equal to the amount of the purchase-money only.
16. CERTIFICATE OR OTHER DOCUMENT, evidencing the right or title of the holder thereof, or any other person, either to any share, scrip or stock in or of any incorporated company or other body corporate or to become proprietor of shares, scrip or stock in or of any such company or body.	Thirty naye paise.
See also Letter of Allotment of Shares.	
17. CERTIFICATE OF ENROLMENT in the Roll of Advocates prepared and maintained by the State Bar Council under the Advocates Act, 1961 (Central Act 25 of 1961).	Two hundred and fifty rupees.
18. CHARTER PARTY, that is to say, any instrument (except an agreement for the hire of a tug steamer), whereby a vessel or some specified principal part thereof is let for the specified purposes of the charter, whether it includes a penalty clause or not.	Four rupees and fifty naye paise.

Description of Instrument (1)	Proper Stamp Duty (2)
19. COMPOSITION-DEED, that is to say, any instrument executed by a debtor, whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of licence, for the benefit of his creditors.	Thirty-three rupees and seventy-five naye paise.
20. CONVEYANCE, as defined by Section 2 (d) not being a Transfer charged or exempted under No. 52—	Rs. nP.
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50;	2.25
where it exceeds Rs. 50 but does not exceed Rs. 100;	4.10
where it exceeds Rs. 100 but does not exceed Rs. 200;	8.25
where it exceeds Rs. 200 but does not exceed Rs. 300;	12.35
where it exceeds Rs. 300 but does not exceed Rs. 400;	16.50
where it exceeds Rs. 400 but does not exceed Rs. 500;	20.60
where it exceeds Rs. 500 but does not exceed Rs. 600;	27.00
where it exceeds Rs. 600 but does not exceed Rs. 700;	31.50
where it exceeds Rs. 700 but does not exceed Rs. 800;	36.00
where it exceeds Rs. 800 but does not exceed Rs. 900;	40.50
where it exceeds Rs. 900 but does not exceed Rs. 1,000;	45.00
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	22.50.
Exemption	
Assignment of copyright under section 18 of the Copyright Act, 1957 (Central Act XIV of 1957).	
CO-PARTNERSHIP DEED—See Partnership (No. 40).	
21. COPY OR EXTRACT — Certified to be a true copy or extract by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	
(i) if the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed four rupees and fifty naye paise;	Two rupees and twenty-five naye paise.
(ii) in any other case.	Four rupees and fifty naye paise.
Exemptions	
(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.	
(b) Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, divorces, deaths or burials.	
22. COUNTERPART OR DUPLICATE — Of any instrument, chargeable with duty and in respect of which the proper duty has been paid—	

Description of Instrument (1)	Proper Stamp Duty (2)
(a) if the duty with which the original instrument is chargeable does not exceed four rupees and fifty naye paise;	The same duty as is payable on the original.
(b) in any other case ..	Four rupees and fifty naye paise.
Exemption	
Counterpart of any lease granted to a cultivator, when such lease is exempted from duty.	
23. CUSTOMS BOND—	
(a) where the amount does not exceed Rs. 1,000;	The same duty as a Bottomry Bond (No. 13) for such amount.
(b) in any other case.	Thirty rupees.
DECLARATION OF ANY TRUST.—See Trust (No. 54).	
24. DELIVERY ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns or holder thereof, to the delivery of any goods lying in any dock or port, in any warehouse in which goods are stored, or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees.	Fifteen naye paise.
DEPOSIT OF TITLE DEEDS—	
See Agreement relating to Deposit of Title Deeds, Pawn or Pledge (No. 6).	
DISSOLUTION OF PARTNERSHIP — See Partnership (No. 40).	
25. DIVORCE — Instrument of — that is to say, any instrument by which any person effects the dissolution of his marriage.	Seven rupees and fifty naye paise.
DOWER — Instrument of — See Settlement (No. 48).	
DUPLICATE — See Counterpart (No. 22).	
26. EXCHANGE OF PROPERTY — Instrument of.	The same duty as a Conveyance (No. 20) for a consideration equal to the value of the property of greatest value as set forth in such instrument.
EXTRACT — See Copy (No. 21).	
27. FURTHER CHARGE — Instrument of —, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of Article No. 34 (that is, with possession);	The same duty as a Conveyance (No. 20) for a consideration equal to the amount of further charge secured by such amount.
(b) when such mortgage is one of the description referred to in clause (b) of article No. 34 (that is, without possession)—	
(i) if at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument;	The same duty as a Conveyance (No. 20) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(ii) if possession is not given.	The same duty as a Bottomry Bond (No. 13) for the amount of the further charge secured by such instrument.
*28. GIFT —Instrument of, not being a Settlement (No. 48), or Will or Transfer (No. 52).	The same duty as a Conveyance (No. 20) for a consideration equal to the value of the property which is the subject-matter of the gift:

Description of Instrument (1)	Proper Stamp Duty (2)
	Provided that where the instrument of gift contains any provision for the revocation of the gift, the value of the property, which is the subject-matter of the gift, shall, for the purposes of duty, be determined as if no such provision were contained in the instrument.

[*] Substituted by Mys. Act 17 of 1966, S. 6 (3) (15-11-1966).

29. INDEMNITY BOND	The same duty as a Security Bond (No. 47) for the same amount.
INSPECTORSHIP DEED.—See Composition Deed (No. 19).	
30. LEASE.—Including an under lease or sub-lease and any agreement to let or sub-let—	
(a) where by such lease the rent is fixed and no premium is paid or delivered—	
(i) where the lease purports to be for a term of less than one year;	The same duty as a Bottomry Bond (No. 13) for the whole amount payable or deliverable under such lease.
(ii) where the lease purports to be for a term of not less than one year but not more than five years;	The same duty as a Bottomry Bond (No. 13) for the amount or value of the average annual rent reserved.
(iii) where the lease purports to be for a term exceeding five years and not exceeding ten years;	The same duty as a Conveyance (No. 20) for a consideration equal to the amount or value of the average annual rent reserved.
(iv) where the lease purports to be for a term exceeding ten years but not exceeding twenty years;	The same duty as a Conveyance (No. 20) for a consideration equal to twice the amount or value of the average annual rent reserved.
(v) where the lease purports to be for a term exceeding twenty years but not exceeding thirty years;	The same duty as a Conveyance (No. 20) for a consideration equal to three times the amount or value of the average annual rent reserved.
(vi) where the lease purports to be for a term exceeding thirty years but not exceeding one hundred years;	The same duty as a Conveyance (No. 20) for a consideration equal to four times the amount or value of the average annual rent reserved.
(vii) where the lease does not purport to be for a term exceeding one hundred years or in perpetuity;	The same duty as a Conveyance (No. 20) for a consideration equal to one-sixth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(viii) where the lease does not purport to be for any definite term;	The same duty as a Conveyance (No. 20) for a consideration equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved;	The same duty as a Conveyance (No. 20) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease.
(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved;	The same duty as a Conveyance (No. 20) for a consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered: Provided that, in any case when an agreement to lease is stamped with the ad valorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such

Description of Instrument (1)	Proper Stamp Duty (2)
	lease shall not exceed two rupees and twenty-five naye paise.
Exemption Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink), without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees. Explanation.—When a lessee undertakes to pay any recurring charge, such as Government revenue, the landlord's share of cesses, or the owner's share of Municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.	
31. LETTER OF ALLOTMENT OF SHARES in any company, or proposed company or in respect of any loan to be raised by any company or proposed company. See also Certificate or other Document (No. 16).	Thirty naye paise.
Letter of Guarantee — See Agreement (No. 5).	
32. LETTER OF LICENCE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.	Twenty-two rupees and fifty naye paise.
33. MEMORANDUM OF ASSOCIATION OF A COMPANY,— (a) if accompanied by articles of association under Section 26 of the Companies Act, 1956 (Central Act I of 1956), (b) if not so accompanied.	Ninety rupees. Two hundred and forty rupees.
Exemption Memorandum of any association not formed for profit registered under Section 25 of the Companies Act, 1956.	
34. MORTGAGE DEED, not being an Agreement relating to Deposit of Title Deeds, Pawn or Pledge (No. 6), Bottomry Bond (No 13), Mortgage of a Crop (No. 35), Respondentia Bond (No. 46) or Security Bond (No. 47),— (a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given; (b) when possession is not given or agreed to be given as aforesaid. Explanation.—A mortgagor who gives to the mortgagee a power-of-attorney to collect rents, or a lease of the property mortgaged or part thereof, is deemed to give possession thereof within the meaning of this article. (c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the abovementioned purpose	The same duty as a Conveyance (No. 20) for a consideration equal to the amount secured by such deed. The same duty as a Bottomry Bond (No. 13) for the amount secured by such deed.

Description of Instrument (1)	Proper Stamp Duty (2)
where the principal or primary security is duly stamped—	
for every sum secured not exceeding Rs. 1,000.	Two rupees and fifty naye paise.
and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000.	Two rupees and twenty-five naye paise.
Exemptions	
(1) Instruments executed by persons taking advances under the Land Improvement Loans Act, 1883 (Central Act XIX of 1883) or the Agriculturists' Loans Act, 1884 (Central Act XII of 1884) or the Mysore Land Improvement Loans Act, 1890 (Mysore Act IV of 1890) or Section 194 of the Mysore Land Revenue Code, 1888 (Mysore Act IV of 1888) or the Hyderabad Land Improvement Loans Act, 1950 (Hyderabad Act III of 1950) or the Hyderabad Agriculturists' Loans Act, 1950 (Hyderabad Act II of 1950) or by their sureties as Security for the repayment of such advances.	
(2) Letter of hypothecation accompanying a bill of exchange.	
35. MORTGAGE OF A CROP — Including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage—	
(a) when the loan is repayable not more than three months from the date of the instrument—	
for every sum secured not exceeding Rs. 200;	Thirty-five naye paise.
and for every Rs. 200 or part thereof secured in excess of Rs. 200;	Thirty-five naye paise.
(b) when the loan is repayable more than three months, but not more than eighteen months from the date of the instrument—	
for every sum secured not exceeding Rs. 100;	Sixty naye paise.
and for every Rs. 100 or part thereof secured in excess of Rs. 100.	Sixty naye paise.
36. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate, or entry not being a Protest (No. 42) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public. See also Protest of Bill or Note (No. 42).	Three rupees and thirty-five naye paise.
*37. NOTE OR MEMORANDUM sent by a broker or agent to his principal intimating the purchase or sale on account of such principal—	
(a) of any goods exceeding in value twenty rupees;	Fifty paise.
(b) of any share, scrip, bond, debenture, debenture-stock or other marketable security of a like nature exceeding in value twenty rupees, not being a Government security.	Fifteen paise for every 2,500 rupees or part thereof of the value of the security at the time of its purchase or sale, as the case may be.

Description of Instrument (1)	Proper Stamp Duty (2)
(c) of a Government security.	Subject to a maximum of forty rupees twenty-five paise for every ten thousand rupees or part thereof of the value of the security at the time of its purchase or sale as the case may be.

[*] Substituted by Mys. Act 17 of 1966, S. 6 (4) (15-11-1966).

38. NOTE OF PROTEST BY THE MASTER OF A SHIP— See also Protest by the Master of a Ship (No. 43).	One rupee and fifty naye paise.
39. PARTITION — Instrument of — [as defined by Section 2 (1) (k).]	The same duty as a Bottomry Bond (No. 13) for the amount of the value of the separated share or shares of the property. **N. B.**—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated: Provided always that—(a) when an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than two rupees and twenty-five naye paise; (b) when land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the value for the purpose of duty shall be calculated at twenty-five times the annual revenue; (c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed two rupees and twenty-five naye paise.
40. PARTNERSHIP— A. Instrument of— (a) where the capital of the partnership does not exceed Rs. 500; (b) in any other case. B. Dissolution of—	Fifteen rupees. Sixty rupees. Thirty rupees.
PAWN OR PLEDGE — See Agreement relating to Deposit of Title Deeds, Pawn or Pledge (No. 6).	
41. POWERS OF ATTORNEY [as defined by Section 2 (1) (p)], not being a proxy— (a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting excution of one or more such documents;	One rupee ten naye paise.
(b) when authorising one person or more to act in a single transaction other than the case mentioned in clause (a);	Two rupees and twenty five naye paise.
(c) when authorising not more than five persons to act jointly and	Sixteen rupees and eighty-five naye paise.

Description of Instrument (1)	Proper Stamp Duty (2)
severally in more than one transaction or generally;	
(d) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally;	Thirty rupees and seventy-five naye paise.
(e) when given for consideration and authorising the attorney to sell any immoveable property;	The same duty as a Conveyance (No. 20) for the amount of the consideration.
(f) in any other case.	Three rupees thirty-five naye paise.
N. B.— The term "Registration" includes every operation incidental to registration under the Indian Registration Act, 1908 .	
Explanation	
For the purposes of this article, more persons than one when belonging to the same firm shall be deemed to be one person.	
42. PROTEST OF BILL OR NOTE, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note.	Three rupees.
43. PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship when such declaration is attested or certified by a Notary Public or other person lawfully acting as such.	hree rupees.
See also Note of Protest by the Master of Ship (No. 38).	
44. RECONVEYANCE OF MORTGAGED PROPERTY—	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000;	The same duty as a Conveyance (No. 20) for the amount of such consideration as set forth in the reconveyance.
(b) in any other case.	Forty-five rupees.
45. RELEASE, that is to say, any instrument (not being such a release as is provided for by Section 24), whereby a person renounces a claim upon another person or against any specified property—	
(a) if the amount or value of the claim does not exceed Rs. 1,000;	The same duty as a Bottomry Bond (No. 13) for such amount or value as set forth in the release.
(b) in any other case.	Twenty-two rupees and fifty naye paise.
46. RESPONDENTIA BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a Bottomry Bond (No. 13) for the amount of the loan secured.
REVOCATION OF ANY TRUST OR SETTLEMENT.—See Settlement (No. 48); Trust (No. 54).	
47. SECURITY BOND OR MORTGAGE DEED, executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract—	

Description of Instrument (1)	Proper Stamp Duty (2)
(a) when the amount secured does not exceed Rs. 1,000;	The same duty as a Bottomry Bond (No. 13) for the amount secured.
(b) in any other case.	Twenty-two rupees and fifty naye paise.
Exemptions	
Bond or other instrument, when executed— (a) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital, or any other object of public utility, shall not be less than a specified sum per mensem. (b) under No. 3-A of the rules made under S. 70 of the Bombay Irriga- Act, 1879; (c) by persons taking advances under the Land Improvement Loans Act, 1883 (Central Act No. XIX of 1883) or the Agriculturists' Loans Act, 1884 (Central Act No. XII of 1884), or the Mysore Land Improvement Loans Act, 1890 (Mysore Act No. IV of 1890), or Section 194 of the Mysore Land Revenue Code, 1888 (Mysore Act IV of 1888), the Hyderabad Land Improvement Loans Act, 1950 (Hyderabad Act III of 1950), or the Hyderabad Agriculturists' Loans Act, 1950 (Hyderabad Act II of 1950), or by their sureties, as security for the repayment of such advances; (d) or by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.	
48. SETTLEMENT— A. Instrument of (including a deed of dower)—	The same duty as a Bottomry Bond (No. 13) for a sum equal to the amount or value of the property settled *[* * *] in such settlement: Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed two rupees and twenty-five naye paise.
Exemption	
Deed of dower executed on the occasion of a marriage between Muhammadans. See also Trust (No. 54).	
B.—Revocation of—	The same duty as a Bottomry Bond (No. 13) for a sum equal to the amount or value of the property concerned *[* * *] in the Instrument of Revocation, but not exceeding forty-five rupees.
[*] Words 'as set forth' omitted by Mys. Act 17 of 1966, S. 6 (5) (15-11-1966).	
49. SHARE WARRANTS to bearer issued under the Companies Act, 1956 (Central Act I of 1956).	One-and-a-half times the duty payable on a Conveyance (No. 19) for a consideration equal to the nominal amount of the shares specified in the warrant.
Exemptions	
Share warrant when issued by a company in pursuance of section 114 of the Companies Act, 1956, to have effect only upon payment, as composition for that duty to the	

Description of Instrument (1)	Proper Stamp Duty (2)
Deputy Commissioner of Stamp Revenue, of— (a) one-and-a-half per centum of the whole subscribed capital of the companies or (b) if any company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital one-and-a-half per centum of the additional capital so issued.	
50. SHIPPING ORDER for or relating to the conveyance of goods on board of any vessel.	Fifteen naye paise.
51. SURRENDER OF LEASE— (a) when the duty with which the lease is chargeable does not exceed twenty-two rupees and fifty naye paise; (b) in any other case.	The duty with which such lease is chargeable. Twenty-two rupees and fifty naye paise.
Exemption Surrender of lease, when such lease is exempted from duty.	
52. TRANSFER (whether with or without consideration) (a) of debentures, being marketable securities, whether the debenture is liable to duty or not;	One-half of the duty payable on a Conveyance (No. 20) for a consideration equal to the face amount of the debenture.
(b) of any interest secured by a bond, mortgage deed or policy of insurance,— (i) if the duty on such bond, mortgage deed or policy does not exceed twenty-two rupees and fifty naye paise. (ii) in any other case;	The duty with which such bond, mortgage deed or policy of insurance is chargeable. Twenty-two rupees and fifty naye paise. Thirty-three rupees and seventy-five naye paise.
(c) of any property under section 25 of the Administrator-General's Act, 1913;	Eleven rupees and twenty-five naye paise or such smaller amount as may be chargeable under clauses (a) and (b) of this article.
(d) of any trust property from one trustee to another trustee or from a trustee to a beneficiary.	
Exemptions Transfers by endorsement— (a) of a bill of exchange, cheque or promissory note; (b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods; (c) of a policy of insurance; (d) of securities of the Central Government or of the State Government. See also Section 8.	
53. TRANSFER OF LEASE by way of assignment, and not by way of under-lease.	The same duty as a Conveyance (No. 20) for a consideration equal to the amount of the consideration for the transfer.
Exemption The transfer of any lease exempt from duty.	
54. TRUST.	
A.—DECLARATION OF — of, or concerning, any property when made by any writing not being a Will.	The same duty as a Bottomry Bond (No. 13) for a sum equal to the amount or value of the property concerned, as set forth in the instrument but not exceeding sixty-seven rupees and fifty naye paise.
B.—REVOCATION OF — of, or concerning, any property when made by instrument other than a Will.	The same duty as a Bottomry Bond (No. 13) for a sum equal to the amount or value of the property concerned, as set forth in the instrument but not exceeding forty-five rupees.

Description of Instrument (1)	Proper Stamp Duty (2)
See also Settlement (No. 48).	
VALUATION—See Appraisement (No. 8).	
55. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be.	One rupee and ten naye paise.

[THE INDIAN] STANDARDS INSTITUTION (CERTIFICATION MARKS) ACT, 1952

(ACT XXXVI OF 1952)

[The text of the Act printed here is as on 30-9-1973.]

CONTENTS

SECTIONS

1. **Short title and extent.**
2. **Definitions.**
3. **Powers and duties of the Institution.**
4. **Authentication of orders and other instruments of the Institution**
5. **Prohibition of improper use of Standard Mark.**
6. **Prohibtion of use of certain names, etc.**
7. **Prohibition of registration in certain cases.**
8. **Inspectors.**
9. **Power to obtain information, etc.**
10. **Power to authorise the competent authority.**
11. **Appeals.**
12. **Certain matters to be kept confidential.**
13. **Penalty for improper use of Standard Marks, etc.**
14. **Penalty for other offences.**
15. **Cognizance of offences by Courts.**
16. **Protection of action taken under this Act.**
17. **Act not to affect the operation of certain Acts.**
18. **Savings.**
19. **Directions by the Central Government.**
20. **Power to make rules.**
21. **Power to make regulations.**

STATEMENT OF OBJECTS AND REASONS

"As a prerequisite to the establishment of a healthy trade, both internal and external, standardisation of products in respect of quality which would compare very favourably with the established makes of foreign products, is essential and needs no emphasis. With this object in view the Government of India in the Department of Industries and Supplies in their Resolution No. 1 Std. (4)/45, dated the 3rd September, 1946, set up the Indian Standards Institution with inter alia the following functions:—

(a) to prepare and promote the general adoption of standards on national and international basis,

(b) to promote standardisation, quality, control and simplification in industry,

(c) to provide for registration of standardisation marks applicable to products, commodities, etc.,

(d) to provide or arrange facilities for the examination and testing of commodities, etc.

..

The Indian Standards Institution have drawn up or are now finalising the Indian Standards Specifications for most of the commodities and manufactured articles which figure in our export trade with overseas countries, and also in the home markets.

2. The Certification Mark is a convenient measure to secure standardisation of commodities and is in use in many progressive countries, such as the U. K.,

France, etc. As defined in the Trade Marks Act, it is a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified. The underlying idea is to convey this assurance to the purchaser that the goods or services so certified have been inspected, tested, and certified by some agency of competence and that they may be purchased with more than ordinary assurance that certain standards of quality have been met.

3. The present Bill seeks to achieve the objects as set forth in Government Resolution dated the 3rd September, 1946."—Gaz. of Ind., 1951, Extra., Pt. II-Sec. 2, page 6.

Amending Act, 1961:

Experience of working of the Indian Standards Institution (Certification Marks) Act, 1952, during the last five years revealed the need to amend it in certain respects. The definition of 'Indian Standard' in Section 2 of the Act, as it stands, does not permit standard marks being prescribed for an article or a process in respect of which the Indian Standards Institution itself has not established standards. It has been found desirable to allow Standard Marks being prescribed for articles or processes in respect of which the Indian Standards Institution has not established its own standards but has recognised standards established by others. It is proposed to achieve this object by appropriately amending the definition of "Indian Standard". It is further proposed to include a provision in the Act declaring the Inspectors appointed thereunder as public servants within the meaning of the Indian Penal Code, in order to give them legal protection in the discharge of their duties. Opportunity is also being taken to extend the provisions of the Act to the State of Jammu and Kashmir.—S.O.R., Gaz. of Ind., 1961, Pt. II, Sec. 2, Extra., page 547.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XXXVI of 1957; XLIV of 1961.

—Extended by Act I of 1962: Regns. VI of 1963; VII of 1963.

[THE INDIAN] STANDARDS INSTITUTION (CERTIFICATION MARKS) ACT, 1952
(ACT XXXVI OF 1952)*

[21st March, 1952.]

An Act to provide for the standardisation and marking of goods.

Be it enacted by Parliament as follows

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1951, Extra., Pt. II, Sec. 2, page 6.

1. Short title and extent.—(1) This Act may be called THE INDIAN STANDARDS INSTITUTION (CERTIFICATION MARKS) ACT, 1952.

(2) It extends to the whole of India *[* * *.]

[*] The words "except the State of Jammu and Kashmir" were omitted by the Indian Standards Institution (Certification Marks) Amendment Act, 1961 (XLIV of 1961), Section 2 (30-11-1961).

The Act has been extended to the Union territory of—

(1) Goa, Daman and Diu by G.S.R. 1205, Gaz. of Ind., 1966, Pt. II, Sec. 3(i), page 1345, published under Section 6 of Act I of 1962;

(2) Dadra and Nagar Haveli by Regn. VI of 1963 (1-7-1965);

(3) Pondicherry by Regn. VII of 1963 (1-10-1963).

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "article" means (as respects standardisation and marking) any substance artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured;

(b) "covering" includes any stopper, cask, bottle, vessel, box, crate, cover capsule, case, frame, wrapper or other container;

(c) "Indian Standard" means the standard (including any tentative or provisional standard) established and published by the Indian Standards Institution, in relation to any article or process, indicative of the quality and specification of such article or process °[and includes any standard recognised by the Institution under clause (aa) of section 3];

[°] Inserted by Act XLIV of 1961, S. 3 (30-11-1961).

[†] Standard means that which is of authority and the test of other things of the same kind.

OBJECTS AND REASONS

Amendment made in 1961.—"The definition 'Indian Standard' in section 2 of the Act as it stands, does not permit Standard Marks being prescribed for an article or a process in respect of which the Indian Standards Institution itself has not established standards. It has been found desirable to allow Standard Marks being prescribed for articles or processes in respect of which the Indian Standards Institution has not established its own Standards, but has recognised Standards established by others. It is proposed to achieve this object by appropriately amending the definition of 'Indian Standard'.—S.O.R., Gaz. of Ind., 1961, Extra., Pt. II, Sec. 2, page 547.

(d) "Inspector" means an Inspector appointed under section 8;

(e) "Institution" means the Indian Standards Institution set up under the Resolution of the Government of India in the late Department of Industries and Supplies No. 1 Std. (4)/45, dated the 3rd day of September, 1946, and registered under the Societies Registration Act, 1860;

Note.—The Indian Standard Institution was set up with, inter alia, these functions: (a) to provide and promote the general adoption of standards on national and international basis; (b) to promote standardisation, quality, control and simplification in the industry; (c) to provide for registration of standardisation marks applicable to products, commodities, etc.; and (d) to provide or arrange facilities for the examination and testing of commodities, etc.

(f) "licence" means a licence granted under this Act to use the Indian Standards Institution Certification Mark, in relation to any article or process which conforms to the Indian Standard;

(g) "mark" includes a device, brand, heading, label, ticket, pictorial representation, name, signature, word, letter or numeral or any combination thereof;

Note.—The Trade and Merchandise Marks Act, 1958, Section 2 (1) (j), defines "mark" thus: "'Mark' includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof."

(h) "prescribed" means prescribed by rules or regulations made under this Act;

(i) "process" includes any practice, treatment and mode of manufacture of any article;

(j) "registering authority" means any authority competent under any law for the time being in force to register any company, firm or other body of persons, or any trade mark or design, or to grant a patent;

(k) "specification" means a description of an article or process as far as practicable by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, material, mode of manufacture or other characteristics to distinguish it from any other article or process;

(l) "Standard Mark" means the Indian Standards Institution Certification Mark specified by the Indian Standards Institution to represent a particular Indian Standard;

(m) "trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark, whether with or without any indication of the identity of that person;

(n) an article is said to be marked with a Standard Mark if the article itself is marked with a Standard Mark or any covering containing, or label attached to, such article is so marked.

3. Powers and duties of the Institution.—The institution may exercise such powers and perform such duties as may be assigned to it by or under this Act, and, in particular, such powers include power to—

(a) establish and publish, in such manner as may be prescribed, the Indian Standard in relation to any article or process;

*[(aa) recognise as an Indian Standard, in such manner as may be prescribed, any standard established by any other Institution in India or elsewhere, in relation to any article or process;]

(b) specify a Standard Mark to be called the Indian Standards Institution Certification Mark, which shall be of such design and contain such particulars as may be prescribed to represent a particular Indian Standard;

(c) grant, renew, suspend or cancel, in such manner as may be prescribed, a licence for the use of the Standard Mark;

(d) levy such fees for the grant or renewal of any licence as may be prescribed;

(e) make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without licence;

(f) do such other acts as may be prescribed.

[*] Inserted by the Indian Standards Institution (Certification Marks) Amendment Act, 1961 (XLIV of 1961), Section 4 (30-11-1961).

4. Authentication of orders and other instruments of the Institution.—All orders and decisions of and all other instruments issued by, the Institution shall be authenticated by the signature of such officer or officers as may be authorised by the Institution in this behalf.

5. Prohibition of improper use of Standard Mark.—(1) No person shall use, in relation to any article or process, or in the title of any patent, or in any trade mark or design the Standard Mark or any colourable imitation thereof, except under a licence granted under this Act.

(2) No person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the Standard Mark or any colourable imitation thereof unless such article or process conforms to the Indian Standard.

6. Prohibition of use of certain names, etc.—No person shall, except in such cases and under such conditions as may be prescribed, use without the previous permission of the Institution,—

(a) any name which so nearly resembles the name of the Indian Standards Institution as to deceive or likely to deceive the public or which contains the expression "Indian Standard" or any abbreviation thereof; or

(b) any mark or trade mark in relation to any article or process containing the expressions "Indian Standard" or "Indian Standard Specification" or any abbreviation of such expressions.

Note.—Contravention of the provisions of sections 5 and 6 is punishable with fine which may extend to ten thousand rupees. The property in respect of which the contravention has taken place is also liable to be forfeited to the Government—See Section 13.

[Cf. Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950), S. 3; Trade and Merchandise Marks Act, 1958, S. 11.]

7. Prohibition of registration in certain cases.—(1) Notwithstanding anything contained in any law for the time being in force, no registering authority shall—

(a) register any company, firm or other body of persons which bears any name, or

(b) register a trade mark or design which bears any name or mark, or

(c) grant a patent, in respect of an invention, which bears a title containing any name or mark,

if the use of such name or mark is in contravention of section 5 or section 6.

(2) If any question arises before a registering authority whether the use of any name or mark is in contravention of section 5 or section 6, the registering authority may refer the question to the Central Government, whose decision thereon shall be final.

8. **Inspectors.**—(1) The Institution may appoint as many Inspectors as may be necessary for the purpose of inspecting whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without licence, and for the purpose of performing such other functions as may be assigned to them.

(2) Subject to any rules made under this Act, an Inspector shall have power to—

(a) inspect any operation carried on in connection with any article or process in relation to which the Standard Mark has been used;

(b) take samples of any article, or of any material or substance used in any article or process, in relation to which the Standard Mark has been used;

(c) exercise such other powers as may be prescribed.

(3) Every Inspector shall be furnished by the Institution with a certificate of appointment as an Inspector, and the certificate shall, on demand, be produced by the Inspector.

°[(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.]

[*] Inserted by the Indian Standards Institution (Certification Marks) Amendment Act, 1961 (XLIV of 1961), Section 5 (30-11-1961).

9. **Power to obtain information, etc.**—Every licensee shall supply the Institution with such information, and with such samples of any material or substance used in relation to any article or process, as the Institution may require.

10. **Power to authorise the competent authority.**—(1) The Central Government may, in consultation with the Institution, by notification† in any Official Gazette, direct that any power exercisable by the Institution *[* * *] under this Act shall, in relation to such matters and subject to such conditions as may be specified in the direction, be exercisable also by such authority or such organisation as may be specified in the notification (hereinafter referred to as the "competent authority").

(2) For avoidance of doubts, it is hereby declared that the Central Government may, by a like notification, withdraw‡ the powers delegated to a competent authority under sub-section (1).

[°] The words "by or" were omitted by the Repealing and Amending Act, 1957 (XXXVI of 1957), Section 3 and Schedule II (17-9-1957).

[†] For such notifications, see Gaz. of Ind., 1964, Pt. II, Sec. 3 (ii), Extra., p. 1177: Gaz. of Ind., 1968, Pt. II, Sec. 3 (ii), p. 1606; Gaz of Ind., 1969, Pt. II, Sec. 3 (ii), pp. 455 and 884: Gaz. of Ind., 1962, Pt. II, Sec. 3 (ii), pp. 561 and 3241.

[‡] For such notification, see S.O. 55, Gaz. of Ind., 1966, Pt. II, Sec. 3 (ii), p. 28.

11. **Appeals.**—(1) Any person aggrieved by an order passed under clause (c) of section 3, whether by the Institution or by a competent authority, may prefer an appeal to the Central Government.

(2) The appeal shall be presented in such form and manner and within such time as may be prescribed.

(3) The Central Government shall, in dealing with appeals under this section, follow such procedure as may be prescribed.

12. Certain matters to be kept confidential.—Any information obtained by an Inspector, competent authority, or the Institution from any statement made or information supplied or in any evidence given or from inspection made under the provisions for this Act shall be treated as confidential:

Provided that nothing in this section shall apply to the disclosure of any information for the purpose of prosecution under this Act.

13. Penalty for improper use of Standard Marks, etc.—(1) Any person who contravenes the provisions of section 5 or section 6 shall be punishable with fine which may extend to ten thousand rupees.

(2) Any Court trying a contravention under sub-section (1) may direct that any property in respect of which the contravention has taken place shall be forfeited to the Government.

14. Penalty for other offences.—Whoever contravenes any of the provisions of this Act or of any rules made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one thousand rupees.

15. Cognizance of offences by Courts.—(1) No Court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the Government or the Institution or by an officer empowered in this behalf by the Government or the Institution.

(2) No Court inferior to that of a presidency magistrate or a magistrate of the first class specially empowered* in this behalf shall try any offence punishable under this Act.

[*] All First Class Magistrates in Jammu and Kashmir are empowered under this provision—See Jammu and Kashmir Gaz., 21-11-1962, Pt. III, Extra. (No. 33G): All Presidency Magistrates and Magistrates of the First Class are specially empowered—See Maha. Gaz., 18-4-1963, Pt. IV-A, p. 468: All First Class Magistrates in the then State of Punjab have been so empowered—See Punj. Gaz., 22-7-1963, Extra., p. 805: All First Class Magistrates in the Union territory of Pondicherry have been empowered under this provision—See Pondi. Gaz., 14-6-1966, No. 24, page 329; see also Him. Pra. Gaz., 29-4-1967, Pt. I, p. 120.

16. Protection of action taken under this Act.—No suit, prosecution or other legal proceeding shall lie against the Central Government or the Institution or any person acting under the authority of the Central Government or the Institution for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made thereunder.

17. Act not to affect the operation of certain Acts.—Nothing in this Act shall affect the operation of the Agricultural Produce (Grading and Marking) Act, 1937, or the Drugs Act, 1940.

18. Savings.—Nothing in this Act shall exempt any person from any suit or other proceeding which might, apart from this Act, be brought against him.

19. Directions by the Central Government.—(1) The Central Government may, if satisfied that the public interest so requires, by order in writing for reasons to be stated therein, give to the Institution general instructions to be followed by the Institution and such instructions may, notwithstanding anything contained in the Societies Registration Act, 1860, include directions to make or amend any bye-law relating to the composition of the Governing Body or other Committees of the Institution and its powers and functions in such form and within such period as may be specified in the order.

(2) In the exercise of its powers and performance of its duties, the Institution shall not depart from any general instructions issued under sub-section (1).

Explanation.—In this section the expression "bye-law" includes all rules, or regulations (by whatever name called) which the Institution is competent to make in the exercise of the powers conferred on it under the Societies Registration Act, 1860.

20. Power to make rules.—(1) The Central Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules* to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure and manner in which the Indian Standard, in relation to any article or process, may be established and published;

†[(aa) the procedure and manner in which any standard established by any institution other than the Indian Standards Institution in India or elsewhere, in relation to any article or process, may be recognised;]

(b) the design of the Standard Mark in relation to each Indian Standard and the particulars which a Standard Mark may contain;

(c) authorisation of competent authority under section 10;

(d) the manner in which, and the conditions subject to which, a licence to use the Standard Mark may be granted, renewed, suspended or cancelled;

(e) the levy of fees for the grant or renewal of any licence;

(f) the mode of inspection by the Institution and the manner in which samples may be taken by it;

(g) the powers and functions of the Institution;

(h) the cases in which, and the circumstances under which, exemption may be granted from the prohibition contained in section 6;

(i) the powers of Inspectors;

(j) the form and manner in which and the time within which appeals may be preferred; the procedure to be followed in hearing appeals;

(k) the forms to be used under this Act;

(l) any other matter which has to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

†[(4) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[*] For the Indian Standards Institution (Certification Marks) Rules, 1955, see Gaz. of Ind., 1955, Pt. II, Sec. 3, p. 99 (as amended by S.O. 1666, Gaz. of Ind., 1962, Pt. II, Sec. 3 (ii), p. 2015: S.O. 28, Gaz. of Ind., 1967, Pt. II, Sec. 3 (ii), p. 78).

[†] Inserted by the Indian Standards Institution (Certification Marks) Amendment Act, 1961 (XLIV of 1961) Sec. 6 (30-11-1961).

21. Power to make regulations.—(1) The Institution may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations,* not inconsistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the matters specified in clauses (a), †[(aa)], (b) and (f) of sub-section (2) of section 20.

[*] For the Indian Standards Institution (Certification Marks) Regulations, 1955, see Gaz. of Ind., 1955, Pt. II, Sec. 3, p. 444 (as amended by S.O. 1166, Gaz. of Ind., 1962, Pt. II, Sec. 3 (ii), p. 1231; S.O. 1099, Gaz. of Ind., 1964, Pt. II,

Sec. 3 (ii), p. 1324; S.O. 2736, Gaz. of Ind., 1966, Pt. II, Sec. 3 (ii), p. 2641; S.O. 3111, Gaz. of Ind., 1968, Pt. II, Sec. 3 (ii), p. 4102.

[†] Inserted by the Indian Standards Institution (Certification of Marks) Amendment Act, 1961 (XLIV of 1961), Section 7 (30-11-1961).

[THE] STANDARDS OF WEIGHTS AND MEASURES ACT, 1956 (ACT LXXXIX OF 1956)

[The text of the Act printed here is as on 30-7-1973.]

CONTENTS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Primary unit of length.
4. Primary unit of mass and standard unit of weight.
5. Unit of time.
6. Unit of electric current.
7. Scale of temperature.
8. Unit of luminous intensity.
9. Primary unit of area.
10. Primary unit of volume.
11. Unit of capacity.
12. Secondary units of mass and measures.
13. Standards of mass and measures.
14. Continuance of certain weights and measures during transitional period.
15. Sets of standards of mass and measures.
15A. Unit of length in navigation by sea or air.
16. Conversion of existing weights and measures into standard mass and measures.
17. Power to make rules.
18. Repeal.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

APPENDIX I and II.

STATEMENT OF OBJECTS AND REASONS

"The standards of weights and length have been laid down in the Standards of Weights Act, 1939, and the Measures of Length Act, 1889, the standards being the seer, the pound, the yard and their multiples and sub-multiples. These standards, however, have not been effectively enforced throughout the country, with the result that different systems of weights and measures prevail in different parts of the country. Moreover, the same term often represents different units of weight in different areas and in different trades even within the same area. This state of chaos hampers trade and provides opportunity for the exploitation of the masses. There is urgent need for enforcing a uniform system of weights and measures throughout the country. The question has been under consideration of the Government for some time past and it is felt that the best course would be to adopt a uniform system of weights and measures based on the metric system. This system has already been adopted by nearly 70 countries and is recognised in all the countries of the world. Its adoption, together with the decimalisation of coinage, will be in the best interests of trade and industry of our country.

2. The Bill seeks to lay down metre as the primary unit of length and kilogram as the primary unit of mass. It lays down standards not only for mass and length, but also for time, temperature, electric current and luminous intensity. The Bill merely lays down the standards of weights and measures. Under Entry 50 of the Union List, Parliament is competent only to establish standards of weights and measures while under Entry 29 of the State List, the actual implementation and enforcement of these standards would be the responsibility of State Governments.

3. The transition to the metric system will be gradual and according to a phased programme. A maximum period of ten years has been provided for the complete adoption of the system. While the transition should be gradual, a far too leisurely pace may defeat the purpose of the reform. The Bill seeks to repeal not only the two Central Acts, namely, the Standards of Weights Act, 1939, and the Measure of Length Act, 1889, but also every State Act in so far as it

establishes any standard of weight or measure. During the transitional period, however, the use of the standards now prevailing will be permitted to the extent necessary."—Gaz of Ind., 1956, Extra., Pt. II, Sec. 2, p. 736.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XLI of 1960; LIV of 1964.

—Extended by Regns. XII of 1962; VI of 1963; Act XXV of 1967.

COGNATE ACTS AND PROVISIONS

1. Andaman and Nicobar Islands Weights and Measures (Enforcement) Regulation, I of 1959.
2. Andhra Pradesh Weights and Measures (Enforcement) Act, Andh. Pra. Act I of 1959.
3. Assam Weights and Measures (Enforcement) Act, Assam Act XIX of 1959.
4. Bihar Weights and Measures (Enforcement) Act, Bih. Act VII of 1959.
5. Bombay Weights and Measures (Enforcement) Act, Bom. Act LXIX of 1958.
6. Goa, Daman and Diu Weights and Measures (Enforcement) Act, Goa Act IX of 1968.
7. Himachal Pradesh Weights and Measures (Enforcement) Act, Him. Pra. Act XXIII of 1968.
8. Kerala Weights and Measures Act, Ker. Act XLV of 1958.
9. Madhya Pradesh Weights and Measures (Enforcement) Act, M. P. Act XIV of 1959.
10. Mysore Weights and Measures (Enforcement) Act, Mys. Act II of 1959.
11. Orissa Weights and Measures (Enforcement) Act, Ori. Act XX of 1958.
12. Punjab Weights and Measures (Enforcement) Act, Punj. Act XXII of 1958.
13. Rajasthan Weights and Measures (Enforcement) Act, XXXII of 1958.
14. Tamil Nadu Weights and Measures (Enforcement) Act, T. N Act XX of 1958.
15. Uttar Pradesh Weights and Measures (Enforcement) Act, U. P. Act V of 1959.
16. West Bengal Standards of Weights and Measures (Enforcement) Act, W. B. Act XXIII of 1958.
17. Laccadive, Minicoy and Amindivi Islands Weights and Measures (Enforcement) Regulation, V of 1961.

[THE] STANDARDS OF WEIGHTS AND MEASURES ACT, 1956 (ACT LXXXIX OF 1956)*

[28th December, 1956]

An Act to establish standards of weights and measures based on the metric system.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1956, Extra., Pt. II-Sec. 2, p. 736; for the Report of the Joint Committee, see ibid, p. 855/3.

The Act has been extended to the Union territory of—

(1) Pondicherry by S.O. 1686, Gaz. of Ind., 1958, Pt. II, Sec. 3 (ii), p. 1469.

(2) Goa, Daman and Diu by Regn. XII of 1962 (1-11-1964);

(3) Dadra and Nagar Haveli by Regn. VI of 1963 (1-7-1965).

It has been extended to the Kohima and Mokokchung districts of the State of Nagaland by Act XXV of 1967, with effect from 1-9-1967—See S.O. 3085 of 1967.

1. Short title, extent and commencement.—(1) This Act may be called THE STANDARDS OF WEIGHTS AND MEASURES ACT, 1956.

(2) It extends to the whole of India *[* * *].

(3) It shall come into force on such date, not being later than ten years from the passing of this Act, as the Central Government may, by notification in the Official Gazette, appoint; and different dates† may be appointed for different pro-

visions of this Act or for different areas or for different classes of undertakings°†, or for different classes of goods.

‡[Provided that, in relation to the State of Jammu and Kashmir, the said period of ten years shall be computed from the date on which the Standards of Weights and Measures (Amendment) Act, 1960, comes§ into force.]

[°] The words "except the State of Jammu and Kashmir" were omitted by the Standards of Weights and Measures (Amendment) Act, 1960 (XLI of 1960), Section 2 (1-10-1960).

[†] Provisions relating to units of mass enforced throughout India (except the State of Jammu and Kashmir and those areas in which, and except those classes of undertakings, or those classes of goods in respect of which the provisions have already come into force) with effect from 1-4-1960—See S.O. 839, Gaz. of Ind., 1960, Pt. II, Sec. 3 (ii), Extra., p. 221; in respect of undertakings engaged in processing or manufacture of tobacco or manufactured tobacco, with effect from 1-1-1961—Gaz. of Ind., 1960, Pt. II, Sec. 3(ii), Extra., p. 3761.

Provisions relating to units of capacity came into force in the whole of India, except Jammu and Kashmir and except those areas where they have already been enforced, with effect from 1-4-1962—See S.O. 742, Gaz. of Ind., 1962, Pt. II, Sec. 3 (ii), p. 670.

For areas in which the unit of capacity was enforced earlier, see S.O. 664 dated 21-3-1961, Gaz. of Ind., 25-3-1961, Pt. II, Sec. 3 (ii), Extra., p. 315; S.O. 984 dated 28-4-1961, Pt. II, Sec. 3 (ii), Extra., p. 611; S.O. 2142 dated 30-8-1961, Pt. II, Sec. 3 (ii), p. 2195: Provisions relating to units of length came into force on 1-10-1961 throughout India, except the State of Jammu and Kashmir and those areas in which they were enforced earlier—S.O. 2375, dated 27-9-1961, Gaz. of Ind., 27-9-1961, Pt. II, Sec. 3 (ii), Extra., p. 1581: so far as units of length are concerned, Act was enforced with effect from 1-4-1962 in the Union territory of Pondicherry—See S.O. 956 dated 28-3-1962, Gaz. of Ind., 28-3-1962, Pt. II, Sec. 3 (ii), Extra., p. 587: in the State of Jammu and Kashmir provisions relating to unit of length came into force on 1-7-1962—See S.O. 1847, Gaz. of Ind., 1962, Pt. II, S. 3 (ii), Extra., p. 2168: provisions in respect of unit of capacity enforced in Jammu and Kashmir with effect from 1-8-1962—See S.O. 2374 dated 24-7-1962, Pt. II, Sec. 3 (ii), Extra., p. 1873: provisions relating to units of area came into force throughout India, except the State of Jammu and Kashmir and the Union territory of Pondicherry on 1-10-1962—See S.O. 2940, Gaz. of Ind., 24-9-1962, Pt. II, S. 3 (ii), Extra., p. 2035: provisions relating to units of volume came into force throughout India, except Jammu and Kashmir and Pondicherry, on 1-10-1962 with exceptions as classes of undertakings, etc.—See S.O. 2942, Gaz. of Ind., 1962, Pt. II, Sec. 3 (ii), Extra., p. 2035.

[‡] The proviso was added by Act XLI of 1960, Section 2 (1-10-1960).

[§] The said Amendment Act, 1960, came into force on 1st October, 1960—See S.O. 2349 dated 23-9-1960 published in Gaz. of Ind., 1960, Extra., Pt. II, S. 3 (ii), p. 547. Proviso has exhausted itself now and the Act has applied in that State in respect of all areas and certain goods, etc.—See S.Os. 732, 733 and 734—Gaz. of Ind., 29-3-1962, Pt. II, Sec. 3 (ii), Extra., pp. 345, 346 and 347—See S.O. 2144 of 1961 also.

[°†] Act came into force on 1-1-1961 in respect of (i) motor transport undertakings so far as they undertake transport by road of passengers, animals or goods; (ii) undertakings engaged in the manufacture of motor vehicles or spare parts so far as they relate to the purchase or sale of motor vehicles or spare parts thereof; and (iii) transactions involving the sale or purchase of motor vehicles or spare parts—See S.O. 3178, Gaz. of Ind., 28-12-60, Pt. II, S. 3 (ii), Ext., p. 595; (1) in respect of undertakings engaged in the manufacture of alcohol in so far as they undertake the sale of alcohol and (ii) departments of Government in so far as they undertake the levy of duties of excise on alcohol, on 1-6-1961 throughout India except Bihar—See S.Os. 1219 and 1223, Gaz. of Ind., 1961 Pt. II, S. 3 (ii), Extra., pp. 803, 804: the Act, so far as undertakings engaged in the import, export, transportation, manufacture, possession or sale of such liquids and the departments of Government in so far as they undertake the regulation and control of the im-

port, export, transportation, etc., or sale of liquids containing alcohol and levy of excise duties on such liquids came into force in Bihar on 1-6-1961—See S.O. 1221, Gaz. of Ind., 1961, Pt. II, Sec. 3 (ii), Extra., p. 803.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "First General Conference of Weights and Measures" means the Conference Generale des Poids et Mesures held at Paris in 1889;

(b) "International Bureau of Weights and Measures" means the Bureau Internationale des Poids et Mesures at Sevres in France;

(c) "kilogram" means the mass of the platinum-iridium cylinder deposited at the International Bureau of Weights and Measures and declared international proto-type of the kilogramme by the First General Conference of Weights and Measures;

*[(d) "metre" means the length equal to 1,650,763.73 wave-lengths, in vacuum, of the radiation corresponding to the transition between the $^{2P}.10$ and $5d_5$ levels of Krypton atom of mass 86;]

(e) "normal atmospheric pressure" means the pressure exercised by 101325 newtons per square metre, a newton being the force which imparts to a mass of one kilogram an acceleration of one metre per second per second.

[*] Substituted for former definition by Act 54 of 1964, Section 2 (30-12-1964).

3. Primary unit of length.—(1) The primary unit of length shall be a metre.

(2) For the purpose of deriving the value of the metre, the Central Government shall cause to be prepared a national proto-type of the metre and shall cause the same to be certified *[by International Bureau of Weights and Measures] and shall deposit the same in such custody and at such place as the Central Government may think fit.

[*] Substituted for the words "in terms of the international proto-type of the metre" by Act 54 of 1964, Section 3 (30-12-1964).

4. Primary unit of mass and standard unit of weight.—(1) The primary unit of mass shall be a kilogram.

(2) For the purpose of deriving the value of kilogram, the Central Government shall cause to be prepared a national proto-type of the kilogram and shall cause the same to be certified in terms of the international proto-type of kilogramme and shall deposit the same in such custody and at such place as the Central Government may think fit.

(3) Notwithstanding anything contained in sub-section (1) of this section and section 12, the primary unit of mass for precious stones shall be a carat which is equal to one-five-thousandth of one kilogram.

(4) The standard unit of weight at any place shall be the weight of the primary unit of mass at that place.

5. Unit of time.—(1) The primary unit of time shall be a second.

(2) A second means *[1/31,556,925.9747] of the length of the tropical year for 1900.0, the year commencing at 12.00 hours universal time on the 1st day of January, 1900.

[*] Substituted for the figures "1/31,556,925.974" by Act 54 of 1964, Section 3 (30-12-1964).

6. Unit of electric current.—(1) The unit of electric current shall be an ampere.

(2) An ampere means that constant current which, flowing in two parallel straight conductors of infinite length, of negligible circular cross-section and placed at a distance of one metre from each other in vacuum, produces a force of 2×10^{-7} newtons per metre length between the conductors.

7. Scale of temperature.—The scale of temperature shall be the centigrade scale otherwise known as celsius where the temperature, under normal atmospheric

pressure, is taken to be zero degree at the melting point of ice and one hundred degrees at the boiling point of water.

OBJECTS AND REASONS

"'Otherwise known as celsius' — These words are added in view of the report of the U. K. Committee on Weights and Measures Legislation (1951) that by recent international agreement the degree centigrade is now described as celsius."—J.C.R., page 855/13.

8. Unit of luminous intensity.—(1) The unit of luminous intensity shall be the candela.

(2) A candela means one-sixtieth part of luminous intensity normally emitted by one centimetre square of integral radiator (black body) at the temperature of solidification of platinum.

9. Primary unit of area.—The primary unit of area shall be the square metre.

10. Primary unit of volume.—The primary unit of volume shall be the cubic metre.

11. Unit of capacity.—The unit of capacity shall be a litre which is the volume occupied by the mass of one kilogram of pure air-free water at the temperature of its maximum density and under normal atmospheric pressure.

12. Secondary units of mass and measures.—The Central Government may, by notification* in the Official Gazette, declare in relation to the units of mass and measures referred to in sections 3 and 4 and sections 9 to 11, both inclusive, the magnitude and denominations of such units of mass and measures as it thinks fit to be the secondary units of mass and measures under this Act:

Provided that every such secondary unit shall be an integral power of ten (positive or negative) of any one of such units.

[*] See S.O. 2134, dated 26-8-1960, Gaz. of Ind., 1960, Pt. II, Sec. 3 (ii), p. 2553.

13. Standards of mass and measures.—(1) The units of mass and measures referred to in sections 3 and 4 and sections 9 to 11, both inclusive, and the secondary units of mass and measures declared under section 12 shall be the standards of mass and measures.

(2) No unit of mass or measure other than the units of mass and measures referred to in sub-section (1) shall be used as a standard mass or measure.

14. Continuance of certain weights and measures during transitional period.—(1) Notwithstanding that this Act has come into force in respect of any area or class of goods or undertakings, the Central Government may, by notification* in the Official Gazette, permit the continuance of the use, after such commencement, in respect of that area or class of goods or undertakings, of such weights and measures, in addition to the standards of mass and measures and for such period, not exceeding three years, as may be specified in the notification.

(2) Nothing in sub-section (1) shall be deemed to empower the Central Government to issue any such notification in respect of any weight or measure which was not in use immediately before the commencement of this Act.

[*] For such notifications, see Appendix II.

Note.—Transition to the metric system has to be gradual, but not at too leisurely a pace as to defeat the purpose of the reform. Shift over to the new system after the coming into force of that Act was bound to take time. Central Government was, therefore, authorised under this section to permit the continuance of the existing system for a certain period not exceeding three years.

15. Sets of standards of mass and measures.—(1) The Central Government shall cause to be prepared as many sets as it may deem necessary of such standards of mass and measures referred to in Section 13 or multiples or sub-multiples thereof as the Central Government may consider expedient, and shall cause each mass

and measure of such set to be authenticated as having been ascertained from the primary units of mass or measure as the case may be.

(2) The Central Government shall supply to each of the State Governments as many such sets as it may deem fit.

°[**15-A. A unit of length in navigation by sea or air.**—Notwithstanding anything contained in this Act, a nautical mile which is equal to 1,852 metres, may be used as the unit of length in relation to navigation by sea or air.]

[°] Inserted by Act 54 of 1964, Section 5 (30-12-1964).

16. Conversion of existing weights and measures into standard mass and measures.—(1) The value expressed in terms of any weight set forth in sub-section (1) of Section 3 of the Standards of Weight Act, 1939, or in terms of any measure expressed in inches, feet, yards or miles or in gallons may be converted into the value expressed in terms of a standard mass or measure at the rates specified in the First Schedule.

(2) The Central Government may, by notification in the Official Gazette specify the rates at which the value expressed in terms of any weight or measure other than those referred to in sub-section (1) may be converted into the value expressed in terms of a standard mass or measure.*

(3) All references in any enactment or in any notification, rule or order under any enactment or in any contract, deed or other instruments to a value expressed in terms of any weight or measure other than those of a standard mass or measure shall be construed as references to that value expressed in terms of a standard mass or measure, as the case may be, converted thereto at the rates specified in the First Schedule or in the notification issued under sub-section (2), as the case may be.

(4) Where in any transaction the value expressed in terms of any weight or measure is required to be converted into that value expressed in terms of a standard mass or measure under this section, the calculation, for the purposes of such transaction, shall be made in such manner as may be prescribed by rules.

[*] For rules, see footnote under Section 17 (2) (e).

17. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules* to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the preparation of the standards of mass and measures under section 15;

(b) the custody of the set of standards of mass and measures which are to be maintained by the Central Government and the periodical verification and adjustment thereof;

(c) the periodical verification and adjustment of sets of standards of mass and measures supplied to the State Governments;

(d) the limits of error which may be tolerated in the standards of mass and measures when they are manufactured for being used, or are being used, in transactions generally, or in any class of transactions in particular;

(e) the manner in which the value expressed in terms of any weight or measure other than in terms of a standard mass and measure may be converted thereto†; and

(f) any other matter which has to be, or may be, prescribed.

‡[(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case

may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

[°] For "the Standards of Weights and Measures Rules, 1958", see S.O. 2403 dated 5-11-1958 published in Gaz. of Ind., 1958, Pt. II, Sec. 3 (ii), p. 2483 (amended by S.O. 2403 dated 5-11-1958).

[†] For "the Standards of Weights and Measures (Conversion to Standard Weights) Rules, 1960", see S.O. 2760 dated 11-11-1960 published in Gaz. of Ind., 1960, Pt. II, Sec. 3 (ii), p. 3337 (as amended by S.O. 2760 dated 19-11-1960).

[‡] Substituted for the original sub-section (3) by the Standards of Weights and Measures (Amendment) Act, 1960 (XLI of 1960), Section 3 (1-10-1960).

18. Repeal.—(1) The Measures of Length Act, 1889, and the Standards of Weight Act, 1939, are hereby repealed.

(2) The enactments specified in the Second Schedule shall, to the extent to which they contain any provision which corresponds to any provision of this Act, stand repealed.

(3) If, immediately before the commencement of this Act or any provision thereof in respect of any area or class of goods or undertakings, there is in force in respect of that area or class of goods or undertakings, any law which corresponds to this Act or to any provision thereof and which is not repealed by sub-section (1) or sub-section (2), that corresponding law shall stand repealed.

THE FIRST SCHEDULE

[See section 16 (1).]

STANDARDS OF WEIGHT

1 grain	= 0.000064799	kilogram.
1 ounce	= 0.0283495	kilogram.
1 pound	= 0.4535924	kilogram.
1 cwt.	= 50.802	kilograms.
1 ton	= 1016.05	kilograms.
1 tola	= 0.0116638	kilogram.
1 seer	= 0.93310	kilogram.
1 maund	= 37.3242	kilograms.

STANDARDS OF LENGTH AND CAPACITY

1 inch	= 0.0254	metre (exact).
1 foot	= 0.3048	metre (exact).
1 yard	= 0.9144	metre (exact).
1 mile	= 1609.344	metres (exact).
1 imperial gallon.	= 4.54596	litres.

THE SECOND SCHEDULE

[See Section 18 (2)]

1. The Assam Adoption of Standard Weights Act, 1955 (9 of 1955).
2. The Bhopal State Weights and Measures Act, 1953 (15 of 1953).
3. The Bihar Weights Act, 1947 (17 of 1947).
4. The Bombay Weights and Measures Act, 1932 (15 of 1932).
5. The Central Provinces and Berar Weights and Measures of Capacity Act, 1928 (2 of 1928).
6. The Cochin Weights and Measures Act, 1112 (63 of 1112).
7. The Coorg Act, 1954 (7 of 1954).
8. The Hyderabad Weights and Measures Act, 1356 Fasli (14 of 1356 Fasli).
9. The Madhya Bharat Weights Act, 1954 (21 of 1954).
10. The Madras Weights and Measures Act, 1948 (22 of 1948), as in force in the State of Madras or of Andhra.
11. The Mysore Weights and Measures Act, 1902 (3 of 1902).
12. The Orissa Weights and Measures Act, 1943 (7 of 1943).
13. The Punjab Weights and Measures Act, 1941 (12 of 1941).
14. The Rajasthan Weights and Measures Act, 1954 (16 of 1954).
15. The Travancore Weights and Measures Act, 1085 (6 of 1085).
16. The United Provinces Weights and Measures Act, 1947 (23 of 1948).

APPENDIX

PART I

Undertakings and Goods in respect of which metric weights are introduced

In exercise of the powers conferred by sub-section (3) of section 1 of the Standards of Weights and Measures Act, 1956, the Central Government has, by notification published in the Gazette of India, appointed different dates for different undertakings or classes of goods. The purport of these notifications is given below:

Notification with date 1	Date on which Act came into force 2	In respect of 3	Published in Gaz. India 4
S. O. 698 D/- 26-4-1958	1 July, 1958	Jute mills in so far as they undertake the purchase and sale of jute products.	1958, Pt. II-S. 3(ii), page 471.
S. O. 1033 D/- 30-5-1958	1 July, 1958	Associations recognised by the Central Government under S. 6 of the Forward Contracts (Regulation) Act, 1952, in so far as they undertake the regulation and control of forward contracts in raw and manufactured jute.	*Ibid*, page 866.
S. O. 414 D/- 31-1-1959	1 Nov., 1959	Units of mass shall come into force in respect of sugar factories in so far as they undertake the purchase of sugarcane or sale of sugar.	1959, Pt. II-S. 3 (ii), page 444.
S. O. 613 D/- 28-2-1959	1 April, 1959	Cotton textile mills in so far as they undertake the sale of yarn and cotton textile products (other than cloth) or the stamping of cloth, yarn and other cotton textile products.	*Ibid*, page 690.
S. O. 1687 D/- 9-7-1959	1 April, 1960	Factories engaged in the manufacture of paints in so far as they undertake the sale of paints.	*Ibid*, page 1875.
S. O. 1822 D/- 29-7-1959	1 April, 1960	Units of mass shall come into force in respect of factories engaged in the manufacture of biscuits in so far as they undertake sale of biscuits.	*Ibid*, page 2011.
S. O. 2253 D/- 25-9-1959	1 April, 1960	Units of mass shall come into force in respect of factories engaged in the manufacture of soap to the extent they undertake the purchase of raw materials for such manufacture and the sale of soap.	*Ibid*, page 2921.
S. O. 2558 D/- 5-11-1959	1 April, 1960	Factories engaged in the manufacture of drugs in so far as they undertake the sale of drugs or purchase of materials.	*Ibid*, page 3177.
S. O. 125 D/- 31-12-1959	1 April, 1960	Transactions involving sale or purchase of fertilizers.	1960, Pt. II-S. 3 (ii), page 228.

S.O. 1251, dated 24-6-53.—1st Oct., 1958, in respect of classes of undertakings and classes of goods specified in the Tables below to the extent specified therein,—

Table A

1. The Indian Air Lines and Air India International Corporations in so far as they undertake air transport services, except in matters relating to air distances and speed of aircraft.

2. Government Deptts. and commercial and industrial undertakings owned or controlled by Government in so far as they undertake the purchase or supply of stores including drugs.

3. Government Departments in so far as they undertake survey of land or mines.

4. Government Departments in so far as they undertake the study or publication of any technical, scientific or marketing data relating to weather, irrigation and power projects or undertake drawings and specifications of scientific apparatus for use in laboratories and educational institutions except in matters relating to air distances and speed of aircraft.

Table B

1. Cotton textile mills in so far as they undertake the purchase of cotton or sale of cloth.

2. Iron and steel factories in so far as they undertake the purchase of raw materials or sale of iron and steel products.

3. Factories engaged in engineering industry in so far as they undertake the sale of their products.

4. Factories engaged in the manufacture of heavy chemicals in so far as they undertake the purchase of raw materials or sale of their products.

5. Factories engaged in the manufacture of cement in so far as they undertake the sale of cement.

6. Factories engaged in the manufacture of salt in so far as they undertake the sale of salt.

7. Factories engaged in the manufacture of paper, pulp, or paper-board in so far as they undertake the sale of paper, pulp or board.

8. Factories engaged in the manufacture of refractories, in so far as they undertake the sale of refractories.

9. Coffee Board in so far as it undertakes the sale of coffee from the surplus pool, either by itself or through its agents.

10. Factories engaged in the manufacture of copper, aluminium, lead, antimony and tin in so far as they undertake the sale of copper, aluminium, lead, antimony and tin including alloys and products of these metals.

11. Associations recognised by the Central Government under section 6 of the Forward Contracts (Regulation) Act, 1952, in so far as they undertake the regulation and control of forward contracts in cotton.

12. Sale of raw rubber.—Gaz. of Ind., 1958, Extra., Pt. II, Sec. 3 (ii), page 770.—

S. O. 1978 dated 25-8-1959—1st October, 1959 is the date appointed in respect of the classes of undertakings specified below to the extent specified therein:

(i) factories engaged in the processing of coir yarn or the manufacture of coir products in so far as they undertake the purchase of coir or coir yarn/or the sale of coir, coir yarn and other coir products;

(ii) the Central Coir Co-operative Marketing Societies in so far as they undertake the purchase of coir or coir yarn or the sale of coir, coir yarn and other coir products.—Gaz. of Ind., 1959, Pt. II, Sec. 3 (ii), page 2148.

(iii) appointed date in respect of woollen mills in so far as they undertake the purchase of raw wool and sale of woollen products is 1-10-1960—See S.O. 1676, Gaz. of Ind., 1960, Pt. II, Sec. 3 (ii), page 1952;

(iv) 1-8-1960—Ports in respect of transactions involving the levy of shipping charges for services rendered and (ii) of port dues on ships and on goods landed or shipped through docks, jetties, bunders and island and wharves, (iii) shipping industry in respect of transactions involving the levy of freight on cargo—See S.O. 1898, Gaz. of Ind., 1-8-1960, Pt. II, Sec. 3 (ii), Extra., page 429.

THE STANDARD OF WEIGHTS AND MEASURES (EXTENSION TO KOHIMA AND MOKOKCHUNG DISTRICTS) ACT, 1967 (ACT 25 OF 1967)*

[26th August, 1967]

An Act to extend the Standards of Weights and Measures Act, 1956 to the Kohima and Mokokchung districts in the State of Nagaland.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 10-7-1967, Pt. II, Sec. 2, Extra., p. 559.

1. Short title.—This Act may be called THE STANDARDS OF WEIGHTS AND MEASURES (EXTENSION TO KOHIMA AND MOKOKCHUNG DISTRICTS) ACT, 1967.

2. Extension of Act 89 of 1956 to Kohima and Mokokchung districts in Nagaland.—The Standards of Weights and Measures Act, 1956, shall, as from the commencement of this Act, extend to the Kohima and Mokokchung districts in the State of Nagaland and shall come into force therein on such date* as the Central Government may, by notification in the Official Gazette, appoint.

[*] 1-9-1967—See Gaz. of Ind., 1967, Pt. II, Sec. 3 (ii), Extra., page 1443 (S.O. 3085 of 1967).

[THE] STATE ACQUISITION OF LANDS FOR UNION PURPOSES (VALIDATION) ACT, 1954 (ACT XXIII OF 1954)

STATEMENT OF OBJECTS AND REASONS

"Under clause (1) of Article 298 of the Constitution, the executive power of the Union extends, inter alia, to acquisition of property for the purposes of the Union; but prior to the commencement of the Constitution the executive power for acquisition of land was vested in the Provincial Governments under the Land Acquisition Act, 1894, Although the Land Acquisition Act, 1894, was brought into line with the Constitution by the Adaptation of Laws Order, 1950, certain Provincial Governments continued to acquire land for Union purposes through an oversight. Convenience and expediency, however, requires that powers for the acquisition of lands for Union purposes should still be vested in the State Governments and this has now been done by means of orders issued under Article 258 (1) of the Constitution entrusting the functions of the Central Government to State Governments. It is, however, necessary that acquisitions made and proceedings held by State Governments for or in connection with the acquisition of lands for Union purposes at any time from the commencement of the Constitution to the date on which they came to be entrusted with the functions of the Central Government under Article 258 (1) should be validated. Hence the present Bill."—Gaz. of Ind., 1954, Extra., Pt. II, Sec. 2, page 2.

[THE] STATE ACQUISITION OF LANDS FOR UNION PURPOSES (VALIDATION) ACT, 1954 (ACT XXIII OF 1954)*

[30th April, 1954.]

An Act to validate the acquisition under the Land Acquisition Act, 1894, of lands by certain State Governments for the purposes of the Union, and orders passed and proceedings held in connection therewith.

BE it enacted by Parliament as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1954, Extra., Pt. II, Section 2, page 2.

1. **Short title.**—This Act may be called THE STATE ACQUISITION OF LANDS FOR UNION PURPOSES (VALIDATION) ACT, 1954.

2. **Validation of certain acquisitions of land and proceedings and orders connected therewith.**—Every acquisition of land for the purposes of the Union made by any State Government acting or purporting to act under the Land Acquisition Act, 1894, at any time during the period beginning with the commencement of the Constitution and ending with the day on which the State Government was entrusted with the functions of the Central Government in relation to the acquisition of land for the purposes of the Union in pursuance of clause (1) of Article 258 of the Constitution, and every proceeding held and order made during the said period in connection with the acquisition of land for any such purposes, shall be deemed to be, and always to have been, as valid as if the State Government had been duly entrusted with the said functions of the Central Government during the said period, and accordingly no acquisition so made, and no proceeding held and no order passed by any authority under the said Act in connection with any acquisition of land during the said period, shall be called in question merely on the ground that the State Government was not duly entrusted with the functions of the Central Government at the time the acquisition was made or the proceeding was held or the order was made.

Note.—See the Statement of Objects and Reasons.

[THE] STATE AGRICULTURAL CREDIT CORPORATIONS ACT, 1968

(ACT 60 OF 1968)

[The text of the Act printed here is as on 30-7-1973.]

CONTENTS

CHAPTER I

PRELIMINARY.

1. **Short title and commencement.**
2. **Definitions.**

CHAPTER II

INCORPORATION OF STATE AGRICULTURAL CREDIT CORPORATIONS AND THEIR CAPITAL.

3. **Establishment of State Agricultural Credit Corporations.**
4. **Head Office and other offices.**
5. **Share capital and shareholders.**
6. **Restrictions on transfer of shares.**

CHAPTER III

MANAGEMENT OF THE CORPORATION.

7. **Management.**
8. **Corporation to be guided by directions of Central Government.**
9. **Constitution of Board.**
10. **Managing director.**
11. **Term of office of directors other than managing director.**
12. **Disqualifications.**
13. **Vacation of seats of directors.**
14. **Executive-Committee and other committees of the Corporation.**
15. **Meetings of Board and committees.**
16. **Directors of Board or members of a committee not to vote in certain cases.**
17. **Defects in appointments not to invalidate acts, etc.**
18. **Fees and allowances of directors and members of committees.**

CHAPTER IV

BUSINESS AND FUNDS OF THE CORPORATION.

19. **Business which the Corporation may transact.**
20. **Borrowing by the Corporation.**
21. **Deposits with the Corporation.**
22. **Limits on borrowings and deposits.**
23. **Corporation to maintain two funds.**
24. **Stabilisation Fund.**
25. **Reserve Fund.**
26. **Payment of dividend.**
27. **Investment of surplus funds.**
28. **Recovery of moneys due to the Corporation.**
29. **Acquisition or transfer by the Corporation of business, assets and liabilities from or to co-operative societies.**

CHAPTER V

GENERAL MEETINGS.

30. **General meetings.**

CHAPTER VI

ACCOUNTS, AUDIT AND RETURNS.

31. **Accounts.**
32. **Audit.**
33. **Returns.**

CHAPTER VII

APPLICATION OF CERTAIN ACTS TO THE CORPORATION.

34. **Certain provisions of the Banking Regulation Act, 1949, to apply to the Corporation.**

35. Certain provisions of the Reserve Bank of India Act. 1934, to apply to the Corporation.
36. Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949, not to apply except as otherwise provided.
37. The Bankers' Books Evidence Act, 1891 to apply.
38. Corporation to be deemed to be a co-operative society for the purposes of Income-tax Act, 1961.
39. Court, Tribunal, etc., not to require production of report on inspection made by the Reserve Bank.

CHAPTER VIII
MISCELLANEOUS
40. Declaration of fidelity and secrecy.
41. Indemnity of director.
42. Protection of action taken in good faith.
43. Liquidation of the Corporation.
44. Reserve Bank to submit report.
45. Staff of the Corporation and delegation of powers.
46. Power of the Central Government to make rules.
47. Power of the Board to make regulations.
48. Amendment of Act 10 of 1963.

THE SCHEDULE

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION
—Amended by Act V of 1970.

[THE] STATE AGRICULTURAL CREDIT CORPORATIONS ACT, 1968 (ACT 60 OF 1968)*

[29th December 1968]

An Act to provide for the establishment in the States and Union territories of Agricultural Credit Corporations and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gazette of India, 6-5-1968, Pt. II, S. 2, Extra., p. 582.

CHAPTER I
PRELIMINARY

1. Short title and commencement.—(1) This Act may be called THE STATE AGRICULTURAL CREDIT CORPORATIONS ACT, 1968.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States or for different Union territories.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "agricultural marketing society" means a co-operative society the objects of which include the marketing of agricultural produce;

(b) "agricultural operation" includes animal husbandry, dairy farming, pisciculture and poultry-farming;

Explanation.—The expression "pisciculture" includes the development of fisheries, both inland and marine, catching of fish and all activities connected therewith or incidental thereto;

(c) "agricultural processing society" means a co-operative society the objects of which include the processing of agricultural produce;

(d) "agricultural produce" includes the produce of an agricultural operation;

(e) "appropriate Government" means,—

(i) in relation to any Corporation established in a Union territory, the Central Government, and

(ii) in relation to any Corporation established at any other place, the State Government;

(f) "banking company" has the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;

(g) "Board" means the Board of Directors of the Corporation;

(h) "co-operative farming society" means a co-operative society the objects of which include the cultivation of land on a co-operative basis;

(i) "Corporation", in relation to a State or Union territory, means the Agricultural Credit Corporation established under section 3 in that State or Union territory, as the case may be;

°[(ii) "corresponding new bank" means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;]

[°] Inserted by Act 5 of 1970, Section 20 (5) (with retrospective effect from 19-7-1969).

(j) "director" means a member of the Board;

(k) "Food Corporation" means the Food Corporation of India established under the Food Corporations Act, 1964;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

(n) "subsidiary bank" has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act, 1959;

(o) "Central Co-operative Bank", "Co-operative Bank", "Co-operative Society", "Primary Agricultural Credit Society", "Scheduled Bank", "State Bank" and "State Co-operative Bank" have the meanings respectively assigned to them in section 2 of the Reserve Bank of India Act, 1934.

CHAPTER II

INCORPORATION OF STATE AGRICULTURAL CREDIT CORPORATIONS AND THEIR CAPITAL

3. Establishment of State Agricultural Credit Corporations.—(1) The appropriate Government may, by notification in the Official Gazette, establish in any State or Union territory an Agricultural Credit Corporation under such name as may be specified in the notification:

Provided that no such Corporation shall be established in any State or Union territory other than the States of Assam, Bihar, Orissa, Rajasthan and West Bengal and the Union territories of Manipur* and Tripura,* except with the previous approval of the Central Government, and no such approval shall be given by the Central Government except after consultation with the Reserve Bank.

(2) The Corporation established under this Act shall be a body corporate by the name specified in the notification referred to in sub-section (1) having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract, and may by that name sue or be sued.

[*] Manipur and Tripura are States with effect from 21-1-1972—See Act 81 of 1971. Two new States formed out of the territories of the State of Assam are Nagaland and Meghalaya—See Acts 26 of 1962 and 81 of 1971 read with S. 5 of 1969.

4. Head Office and other offices.—(1) The Corporation shall establish its head office at such place in the State or Union territory as the appropriate Government may, after consultation with the Reserve Bank, specify.

(2) The Corporation may, after consultation with the appropriate Government, establish offices or agencies at other places in the State or Union territory, as the case may be.

5. Share capital and shareholders.—(1) The authorised capital of each Corporation shall be such sum as the appropriate Government may initially fix but it shall, in no case, be less than one crore of rupees or more than five crores of rupees:

Provided that, where the authorised capital initially fixed is less than five crores of rupees, the appropriate Government may, from time to time, increase the authorised capital to such sum not exceeding five crores of rupees:

Provided further that, where the appropriate Government is not the Central Government, the initial fixation of the authorised capital and any subsequent increase or reduction thereof, shall be made with the prior approval of the Central Government.

(2) The authorised capital of each Corporation shall be divided into such number of shares as the appropriate Government may determine and shall be issued as fully paid-up shares to the parties mentioned in sub-section (3) at such times and in such manner and to such extent as the appropriate Government may determine and each of such shares shall have the same face value.

(3) Out of the capital issued under sub-section (2),—

(a) in the case of a Corporation established in a State, the Central Government shall subscribe for thirty per cent. of the share capital, and in the case of a Corporation established in a Union territory, the Central Government shall subscribe for fifty per cent. of the share capital;

(b) the Reserve Bank shall subscribe for twenty per cent. of the share capital;

(c) in the case of a Corporation established in a State, the State Government shall subscribe for twenty per cent. of the share capital;

(d) the Food Corporation, State Bank, subsidiary banks, *[corresponding new banks,] and banking companies may subscribe for, in the aggregate, thirty per cent. of the share capital:

Provided that none of the said parties shall subscribe for more than fifteen per cent. of the share capital.

(4) The parties referred to in sub-section (3) shall subscribe for the shares before such date as may be specified in this behalf by the Central Government by notification in the Official Gazette.

(5) Subject to the provisions of sub-section (3), the Central Government shall determine the number of shares which are to be allotted to the parties referred to in clause (d) of that sub-section:

Provided that if any of the parties referred to in clause (d) of sub-section (3) fails to subscribe, by the date specified by the Central Government under sub-section (4), for any share allotted to it, such share shall be subscribed for by the Central Government, the Reserve Bank and the appropriate Government in such proportions as may be determined by the Central Government:

Provided further that the shares subscribed for by the Central Government, the Reserve Bank and the appropriate Government, in pursuance of the provisions of the foregoing proviso, may be transferred to any party who is eligible under clause (d) of sub-section (3) to subscribe for such shares in the first instance, so, however, that the total number of shares held by any of the parties referred to in that clause does not exceed fifteen per cent. of the share capital of the Corporation.

[*] Inserted by Act 5 of 1970, Section 20 (5) (w.r.e.f. 19-7-1969).

6. Restrictions on transfer of shares.—Save as otherwise provided in the second proviso to sub-section (5) of section 5, the shares of the Corporation shall not be transferable.

CHAPTER III

MANAGEMENT OF THE CORPORATION

7. Management.—(1) The general superintendence, direction and management of the affairs and business of the Corporation shall vest in a Board of Directors who may exercise all the powers and discharge all the functions which may be exercised or discharged by the Corporation other than those which are expressly directed or required by this Act to be done by the Corporation in general meeting.

(2) The Board in discharging its functions shall act on business principles, regard being had to public interest.

8. Corporation to be guided by directions of Central Government.—In the discharge of its functions, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Reserve Bank, give to it in writing and, if any question arises

whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

9. Constitution of Board.—The Board of Directors of the Corporation shall consist of the following, namely:—

(a) one director to be nominated by the Central Government who shall be the Chairman of the Board;

(b) two directors nominated by the appropriate Government, one of whom shall be a person who has special knowledge of co-operation and who is not an employee of the Central or State Government or of the Reserve Bank, State Bank, subsidiary bank, *[corresponding new bank,] banking company, or Food Corporation;

(c) one director to be nominated by the Reserve Bank;

(d) two directors to be elected in such manner as may be prescribed by the parties subscribing for shares in pursuance of the provisions of clause (d) of sub-section (3), and sub-section (5) of Section 5;

(e) a managing director, to be appointed by the Central Government and, except in the case of first appointment, after consultation with the Board:

Provided that, in appointing a managing director of a Corporation established in a State, the Central Government may also consult the Government of that State.

[*] Inserted by Act 5 of 1970, Section 20 (5) (with retrospective effect from 19-7-1969).

10. Managing director.—(1) The managing director shall—

(a) be a whole-time officer of the Corporation;

(b) perform such duties as the Board may, by regulations or otherwise, assign to him;

(c) hold office for such term, not exceeding three years, as the Central Government may specify at the time of the appointment and be eligible for re-appointment;

(d) receive such salary and allowances and be governed by such terms and conditions of service as the Central Government may—

(i) in the case of first appointment determine, or

(ii) in the case of any subsequent appointment, determine after consultation with the Board.

(2) The Central Government may, after consultation with the Board and for sufficient cause, remove the managing director from office:

Provided that no managing director shall be so removed unless he has been given an opportunity of showing cause against his removal.

(3) If the managing director is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Central Government may, after consultation with the Board, appoint another person to act in his place during his absence.

11. Term of office of directors other than managing director.—(1) A nominated director, other than the managing director, shall hold office during the pleasure of the authority nominating him and the period of such office, unless terminated earlier, shall be two years:

Provided that a nominated director shall be eligible for renomination.

(2) An elected director shall hold office for a period of two years from the date of his election:

Provided that an elected director shall continue in office until the election of his successor.

12. Disqualifications.—No person shall be a director, who,—

(a) except in the case of the managing director, is a salaried official of the Corporation, or

(b) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or
(c) is of unsound mind and stands so declared by a competent Court, or
(d) is or has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude.

13. Vacation of seats of directors.—(1) If a director—
(a) becomes subject to any disqualification specified in section 12, or
(b) is absent without leave of the Board for more than three consecutive meetings thereof,
his seat shall thereupon become vacant.

(2) The managing director or any other director may resign his office by giving notice thereof in writing to the authority by which he was appointed or nominated, or if he is a director elected under clause (d) of section 9, to the Board, and on such resignation being accepted, shall be deemed to have vacated his office.

14. Executive Committee and other committees of the Corporation.—(1) The Board may constitute an Executive Committee consisting of the Chairman of the Board, who shall be the Chairman thereof, the managing director and two other directors, one of whom shall be a person nominated by the appropriate Government under clause (b) of section 9.

(2) The Executive Committee shall discharge such functions as may be prescribed, or may be delegated to it, by the Board.

(3) The Board may constitute such other committees, whether consisting wholly of directors or wholly of other persons or partly of directors and partly of other persons, as it may think fit for such purposes as it may decide.

15. Meetings of Board and committees.—(1) The Board or Executive Committee or any other committee shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) Three directors personally present at any meeting of the Board and two members personally present at a meeting of a committee shall be the quorum for such meeting.

(3) If, for any reason, the Chairman of the Board or of any committee is unable to attend any meeting of the Board or the Committee, as the case may be, the members present at the meeting shall elect one of them to preside at the meeting.

(4) If for any reason a director nominated under clause (a), clause (b) or clause (c) of section 9 is unable to attend any meeting of the Board or of any committee if he is a member thereof, the Government or the Reserve Bank by which such director was nominated may depute any other person to attend such meeting and the person so deputed shall, for the purposes of the said meeting, be deemed to be a director nominated under clause (a), clause (b) or clause (c), as the case may be, of the said section 9 or a member of the committee concerned.

(5) All questions which may come up before any meeting of the Board or a committee shall be decided by a majority of votes of the members present, and in the event of an equality of votes, the Chairman of the Board or of the Committee, as the case may be, or in his absence the person presiding, shall have a second or casting vote.

16. Directors of Board or members of a committee not to vote in certain cases.—Every director or member of a committee who has any direct or indirect pecuniary or other interest in any matter coming up for consideration at a meeting of the Board or a committee shall, as soon as possible, after the relevant facts or circumstances have come to his knowledge, disclose the nature of his interest at such meeting and the disclosure so made shall be recorded in the minutes of the meeting of the Board or of the Committee, as the case may be, and no such director or member shall thereafter take any part in any deliberation or decision of the Board or committee with respect to that matter nor shall his presence at

such meeting be taken into account for the purpose of determining the quorum for the meeting at the time of such deliberation or voting, and if he does vote, his vote shall be void:

Provided that nothing contained in this section shall apply to such director or member of a committee by reason only of his being a shareholder holding not more than two per cent. of the paid-up capital in any public company as defined in the Companies Act, 1956, or in any other Corporation established by any law for the time being in force in India or in any co-operative society, with which or to which the Corporation has entered into or made, or proposes to enter into or make, a contract, loan arrangement or proposal.

17. Defects in appointments not to invalidate acts, etc.—(1) No act or proceeding of the Board or of any of its committees shall be questioned or be invalid on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Board or the committee, as the case may be.

(2) No act done by any person acting in good faith as a director or member of any committee shall be deemed to be invalid merely on the ground that he was disqualified to be a director or member or that there was any other defect in his nomination or appointment.

18. Fees and allowances of directors and members of committees.—Every director and every member of a committee shall be paid such fees and allowances as the Board may, by regulations, determine, for attending the meetings of the Board or, as the case may be, any of its committees, or attending to any other work of the Corporation:

Provided that no fees shall be paid to the Chairman, managing director or any other director, if he is an officer of the Government, Reserve Bank, State Bank, subsidiary bank, *[corresponding new bank], banking company or Food Corporation.

[*] Inserted by Act 5 of 1970, S. 25(5) (with retrospective effect from 19-7-1969).

CHAPTER IV

BUSINESS AND FUNDS OF THE CORPORATION

19. Business which the Corporation may transact.—Subject to the provisions of this Act, the Corporation may transact the following kinds of business, namely:—

(a) the granting of loans and advances, repayable within a period, not exceeding five years, to agriculturists, agricultural marketing societies, agricultural processing societies, Central Co-operative Banks, co-operative farming societies or primary agricultural credit societies for agricultural operations or for such other operations connected therewith as the Board may by regulations determine;

(b) the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not;

(c) the granting and issuing of letters of credit and acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds;

(d) the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances, the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise, providing of safe deposit vaults, and collecting and transmitting money and securities;

(e) the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges;

(f) the entering into contracts of indemnity, suretyship or guarantee with specific security or otherwise;

(g) receiving in consideration of the services mentioned in clauses (b), (c), (d), (e) and (f) such commission as may be agreed upon;

(h) managing or selling of any property which may come into the possession of the Corporation in satisfaction or part satisfaction of any of its claims;

(i) acquiring or holding of any property or any right, title or interest in any property which may form the security or a part of the security for any loan or advance or which may be connected with any business of the Corporation;

(j) any other kind of business which the Central Government may, on the recommendation of the Reserve Bank, authorise;

(k) generally the doing of such things and matters as may be incidental to or consequential upon the discharge of its functions under this Act.

20. Borrowing by the Corporation.—Subject to the provisions of this Act, the Corporation may, for the purposes of carrying out its functions under this Act,—

(a) rediscount with or sell to the Reserve Bank or borrow money from that Bank and for that purpose, the Corporation shall be deemed to be a State Co-operative Bank within the meaning of clause 2 (a), clause 2 (b), clause 2 (bb) and clause (4) of Section 17, sub-section (2) of Section 46A and sub-section (2) of Section 46B of the Reserve Bank of India Act, 1934;

(b) borrow money from the Central Government or the State Government or such other authority or institution as approved in this behalf by the Central Government, on such terms and conditions as may be agreed upon.

21. Deposits with the Corporation.—The Corporation may, with the the prior approval of the Reserve Bank, accept deposits from the appropriate Government, a local authority or any other person whether incorporated or not.

22. Limits on borrowings and deposits.—The aggregate of the amounts borrowed and deposits accepted by the Corporation and outstanding shall not at any time exceed ten times the amount of the paid up share capital and the reserve fund of the Corporation or, with the prior approval of the Central Government, fifteen times the amount of such paid up share capital and reserve fund.

23. Corporation to maintain two funds.—The Corporation shall establish two separate funds, namely:—

(a) Agricultural Credit (Stabilisation) Fund (hereinafter referred to as the Stablilisation Fund) and,

(b) Reserve Fund.

24. Stabilisation Fund.—(1) To the Stabilisation Fund shall be credited such sum not being less than ten and not more than fifteen per cent. as the Corporation may deem fit from out of its net annual profits before declaring a dividend.

(2) Subject to such conditions as may be specified by the Board by regulations, the amount lying to the credit of the Stabilisation Fund shall be utilised solely for the purpose of making loans or advances with a view to enabling any co-operative society or other person to pay its or his dues in cases where, in the opinion of the Corporation, such society or other person is unable to pay such dues in time owing to drought, famine or other natural calamities.

25. Reserve Fund.—(1) To the Reserve Fund shall be credited such sums not being more than fifteen per cent. as the Corporation may deem fit out of its net annual profits before declaring a dividend.

(2) The amounts lying to the credit of the Reserve Fund shall be utilised solely for such purposes as the Board may by regulations specify.

26. Payment of dividend.—After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by bankers, and after crediting to the Stabilisation Fund under section 24 and to the Reserve Fund under section 25, the Corporation may, out of its annual net profits, declare a dividend.

27. Investment of surplus funds.—All moneys belonging to the Corporation which may not, for the time being be required by it shall be—

(a) deposited with the Reserve Bank or with any agency of the Reserve Bank or in consultation with the Reserve Bank with a Scheduled Bank, State Co-operative Bank or Central Co-operative Bank; or

(b) invested in the securities of the Central Government or any State Government or in securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trusts Act, 1882; or

(c) utilised in such other manner as may be approved by the Reserve Bank.

28. Recovery of moneys due to the Corporation.—Where any amount is due to the Corporation in respect of loans or advances or other financial accommodation granted by it to any person, the Corporation or any person authorised by it in writing in this behalf, may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the amount due to it, and if the appropriate Government, or such authority, as that Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due, it may issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner and under the same condition as if it were an arrear of land revenue.

29. Acquisition or transfer by the Corporation of business assets and liabilities from or to co-operative societies.—(1) Subject to the provisions of any law relating to co-operative societies for the time being in force, the Corporation may—

(a) acquire the whole or any part of the business, including the assets and liabilities of a co-operative society;

(b) transfer the whole or any part of its business, including its assets or liabilities to a co-operative society.

(2) The terms and conditions relating to such acquisition or transfer, if agreed upon by the Board and the co-operative society concerned, shall be submitted to the Reserve Bank for its approval and that Bank may by order in writing (hereafter in this section referred to as the order of approval) accord its approval thereto:

Provided that where such acquisition or transfer involves the acquisition of the assets of the co-operative society or a transfer of the liabilities of the Corporation to the co-operative society, no such approval shall be accorded by the Reserve Bank, unless it is satisfied that—

(i) the co-operative society has given notice of the proposed acquisition or transfer, in such manner as may be provided under the law relating to co-operative societies applicable to it, to all its members and creditors, giving them the option, of demanding payment of their share or dues, as the case may be, and

(ii) all the members and creditors have assented to the proposal or deemed to have assented thereto by virtue of any member or creditor failing to exercise his option within such period as may be specified in accordance with such law relating to co-operative societies for the time being in force.

(3) The terms and conditions as approved by the Reserve Bank shall come into effect from the date specified by the Bank in this behalf in the order of approval and be binding upon the Corporation and its shareholders and creditors and if such law relating to co-operative societies so provides be binding also upon the co-operative society and its shareholders and creditors.

(4) If for any reason the terms and conditions cannot come into effect on the date specified in the order of approval, the Reserve Bank may fix another suitable date for that purpose.

(5) On the date on which the terms and conditions as aforesaid come into effect, the business, assets and liabilities of the Corporation, or as the case may be, the co-operative society concerned, shall, by virtue of and in accordance with the provisions of the aforesaid order of approval, and if such law relating to co-operative societies so provides, stand transferred to, and become the business, assets and liabilities of the co-operative society or the Corporation, as the case may be.

CHAPTER V

GENERAL MEETINGS

30. General meetings.—(1) A general meeting (in this Act referred to as an annual general meeting) of the Corporation shall be held at the Head Office of the Corporation within three months from the date on which the annual accounts of the Corporation are closed, and any other general meeting may be convened by the Board at any other time:

Provided that the Central Government may extend the time within which any annual general meeting shall be held, by a period not exceeding one month.

(2) The shareholders present at an annual general meeting shall be entitled to discuss the balance-sheet and profit and loss account of the Corporation, the report of the Board on the working of the Corporation for the period covered by the accounts and the auditor's report on the balance-sheet and accounts.

CHAPTER VI

ACCOUNTS, AUDIT AND RETURNS

31. Accounts.—(1) The balance-sheet and accounts including the profit and loss account of the Corporation shall be prepared and maintained in such form and manner as may be prescribed.

(2) The Board shall cause the books and accounts of the Corporation to be balanced and closed on the thirtieth day of June each year.

32. Audit.—(1) The accounts of the Corporation shall be audited by an auditor duly qualified to act as auditor under sub-section (1) of section 226 of the Companies Act, 1956, who shall be appointed by the Board with the previous approval of the Reserve Bank and shall receive such remuneration from the Corporation as the Board may, with the approval of the Reserve Bank, fix:

Provided that the first auditor shall be appointed by the Central Government within one month from the establishment of the Corporation on such terms and conditions as the Central Government may determine.

(2) The auditor so appointed shall hold office from the conclusion of the annual general meeting of the Corporation until the conclusion of the next annual general meeting:

Provided that the first auditor shall hold office until the conclusion of the first annual general meeting.

(3) The Corporation shall supply its auditor with a copy of its annual balance-sheet and it shall be the duty of the auditor to examine such balance-sheet together with the accounts and vouchers relating thereto and he shall have a list delivered to him of all books kept by the Corporation and shall at all reasonable times have access to the books, accounts, vouchers and other documents of the Corporation.

(4) The auditor may, in relation to the accounts of the Corporation of which he is the auditor, examine any director or any officer or employee of the Corporation and shall be entitled to require from the officers of the Corporation such information and explanation as he may think necessary for the performance of his duties.

(5) The auditor shall make a report to the Corporation upon the annual balance-sheet and accounts examined by him and in every such report he shall state whether in his opinion the accounts exhibit a true and fair view,—

(a) in the case of the balance-sheet, of the state of affairs of the Corporation at the end of the year, and

(b) in the case of the profit and loss account, of the profit or loss for the year, and, in case he had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(6) Without prejudice to anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, if so requested by the Central Government, examine and report upon the accounts of the Corporation and any expenditure incurred by him in connection with such examination and report shall be payable by such Corporation to the Comptroller and Auditor-General of India.

33. Returns.—(1) The Corporation shall furnish, from time to time, to the appropriate Government and to the Reserve Bank such returns as the appropriate Government or the Reserve Bank may require.

(2) The Corporation shall furnish to all its shareholders within three months from the date on which the annual accounts of Corporation are closed or within such further time not exceeding one month as the Central Government may specify, a copy of the balance-sheet as at the close of that year and a profit and loss account for the year, the auditor's report and a report of the Board on the working of the Corporation during the year, and copies of the said balance-sheet, profit and loss account and reports shall be published in the Official Gazette.

(3) The Corporation shall furnish a statement in such form as may be prescribed of its assets and liabilities as at the close of business on the last Friday of each month or if that day is a public holiday under the Negotiable Instruments Act, 1881, as at the close of business at the preceding working day, to the Reserve Bank within ten days from the date to which the statement relates.

CHAPTER VII

APPLICATION OF CERTAIN ACTS TO THE CORPORATION

34. Certain provisions of the Banking Regulation Act, 1949, to apply to the Corporation.—The provisions of sections 8, 9, 20, 20-A, 21, 23, 24, 26, 34-A, 35 [excluding sub-section (4)], 35-A, clause (a) of sub-section (1) of section 36, and sections 46, 47, 50, 53 and 54 of the Banking Regulation Act, 1949, shall apply to or in relation to the Corporation as they apply to or in relation to co-operative banks.

35. Certain provisions of the Reserve Bank of India Act, 1934 to apply to the Corporation.—The provisions of sections 18 and 42 of the Reserve Bank of India Act, 1934, shall apply to or in relation to the Corporation as they apply to or in relation to a State Co-operative Bank.

36. Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949, not to apply except as otherwise provided.—Save as otherwise provided in this Act, nothing contained in the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949, shall apply to or in relation to the Corporation.

37. The Bankers' Books Evidence Act, 1891, to apply.—The Bankers' Books Evidence Act, 1891, shall apply to or in relation to the Corporation as it applies to or in relation to a bank as defined in section 2 of that Act.

38. Corporation to be deemed to be a co-operative society for the purposes of Income-tax Act, 1961.—For the purposes of the Income-tax Act, 1961, or any other enactment for the time being in force relating to any tax on income, profits or gains the Corporation shall be deemed to be a co-operative society.

39. Court, Tribunal, etc., not to require production of report on inspection made by the Reserve Bank.—Notwithstanding anything contained in the Indian Evidence Act, 1872, or any other law for the time being in force, no Court, Tribunal or other authority shall have power to require the Corporation, the Re-

serve Bank or any officer of the Corporation or the Reserve Bank to produce before such Court, Tribunal or other authority the report of any inspection, or any copy thereof, made by the Reserve Bank in pursuance of section 35 of the Banking Regulation Act, 1949, as applied to the Corporation under section 34.

CHAPTER VIII
MISCELLANEOUS

40. Declaration of fidelity and secrecy.—Every director, member of a committee, auditor, officer or other employee of the Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

41. Indemnity of director.—(1) Every director shall be indemnified by the Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible* for anything done or omitted to be done by any other director or officer or other employee of the Corporation or for any loss or expenses resulting to the Corporation by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Corporation in good faith, or by the wrongful act of any auditor or any person under obligation to the Corporation, or by anything done in good faith in the execution of the duties of his office or in relation thereto.

[*] This indicates that the responsibility of the Board is not joint but several only.

42. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Corporation or the Central or State Government or the Reserve Bank or any director or officer of the Corporation or of the Central or State Government or of the Reserve Bank or any other person authorised by the Corporation to discharge any functions under this Act, for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act.

43. Liquidation of the Corporation.—(1) No provision of law relating to the winding up of companies or corporations shall apply to the Corporation and the Corporation shall not be placed in liquidation save by order of the Central Government made in consultation with the State Government and in such manner as it may direct.

(2) Without prejudice to the provisions of sub-section (1), any order made by the Central Government for the liquidation of a Corporation may provide for all matters for effectively winding up the affairs of the Corporation, including the repayment of capital, disposal of any fund established under this Act, the transfer of the business, property, assets and liabilities, rights, interests, privileges and obligations of whatever nature of the Corporation to such institution or institutions as the Central Government may direct and payment, receipt or disposal of compensation arising out of such transfer.

44. Reserve Bank to submit report.—The Reserve Bank shall, on the expiry of a period of three years, from the date of establishment of the Agricultural Credit Corporation in a State or Union territory and thereafter at an interval of three years and within such time as the Central Government may specify, submit a report to that Government as to the working of the Corporation and forward a copy thereof to the State Government concerned.

45. Staff of the Corporation and delegation of powers.—(1) The Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its function and determine, by regulations or otherwise, their conditions of appointment and service and the remuneration payable to them.

(2) The Board may, by general or special order, delegate to the Managing Director or to any other officer of the Corporation, subject to such conditions and limitations, if any, as may be specified, such of its powers and duties under this Act as it may deem necessary.

46. Power of the Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act,

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) functions which shall be discharged by the Executive Committee;

(b) rules of procedure with regard to the transaction of business at a meeting of the Board;

(c) rules of procedure with regard to the transaction of business at a meeting of any committee constituted by the Board;

(d) the procedure to be followed by the appropriate Government or the authority specified by the appropriate Government for issuing the certificate under section 28;

(e) the manner in which the general meeting shall be convened, the quorum therefor, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(f) form and manner in which accounts shall be maintained, the balance-sheet and profit and loss account shall be prepared;

(g) form in which statement of assets and liabilities shall be furnished;

(h) any other matter which is required to be, or may be prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

47. Power of the Board to make regulations.—(1) The Board may, after consultation with the Reserve Bank, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:—

(a) duties which the managing director shall perform;

(b) fees and allowances which may be paid to every director for attending any meeting of the Board or any committee thereof or for attending to any other work of the Corporation;

(c) duties, conduct, salaries and allowances and conditions of service of officers and other employees of the Corporation;

(d) establishment and maintenance of provident and other benefit funds for the employees of the Corporation;

(e) the delegation of powers and functions to the officers and employees of the Corporation;

(f) the purposes connected with agricultural purposes for which the Corporation may grant loans and advances;

(g) the conditions subject to which the amount in the Stabilisation Fund may be utilised;

(h) the manner in which the amount in the Reserve Fund may be utilised;

(i) conditions which the Corporation may impose on any loan or advance made by it;

(j) any other matter which is, or may be, necessary for the efficient conduct of the affairs of the Corporation.

(3) Notwithstanding anything contained in sub-section (1), the Reserve Bank may at any time within three months from the commencement of this Act make regulations with regard to any of the matters specified in sub-section (2) but the

regulations so made may be rescinded or modified by the Board in exercise of the powers conferred on it by sub-section (1).

48. **Amendment of Act 10 of 1963.**—In clause (f) of section 2 of the Agricultural Refinance Corporation Act, 1963, after sub-clause (ii), the following sub-clause shall be inserted, namely:—

"(iii) an Agricultural Credit Corporation established under section 3 of the State Agricultural Credit Corporations Act, 1968.".

THE SCHEDULE

(See section 40)

I, ..., do hereby declare that I will faithfully, truly and to the best of my judgment, skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Agricultural Credit Corporation and which properly relate to any office or position in the said Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Corporation nor will I allow such person to inspect or have access to any books or documents belonging to, or in the possession of, the Corporation and relating to the business of the Corporation.

[THE] STATE ARMED POLICE FORCES (EXTENSION OF LAWS) ACT, 1952

(ACT LXIII OF 1952)

[The text of the Act printed here is as on 30-7-1973.]

CONTENTS

SECTIONS

1. Short title and extent.
2. Definition.
3. Extension of disciplinary laws of any State to members of the armed police force of that State when serving out side that State.
4. Power to add to, or omit from, the Schedule.
5. [Repealed.]

SCHEDULE.

STATEMENT OF OBJECTS AND REASONS

"It sometimes becomes necessary for units of Special Armed Police Forces belonging to one State to serve in other States. When doing so, their rights and liabilities are, under the Police Act, 1888, those of police officers of the State in which they happen to be serving at the time. It is considered that these special units should, wherever they may be serving, be subject to the disciplinary liability imposed upon them by the Special Act constituting them. This Bill seeks to provide for this."—Gaz. of Ind., 1952, Pt. II, Sec. 2, page 212.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act LXII of 1956.

—Repealed in part by Act XXXVI of 1957.

[THE] STATE ARMED POLICE FORCES (EXTENSION OF LAWS) ACT, 1952

(ACT LXIII OF 1952)°

[22nd August, 1952.]

An Act to provide for the extension of disciplinary laws in force in any State relating to the armed police force of that State to members of the said force when serving outside that State.

Be it enacted by Parliament as follows:—

[°] For Statement of Objects and Reasons, see Gaz. of Ind., 1952, Pt. II, Sec. 2, page 212.

1. **Short title and extent.**—(1) This Act may be called THE STATE ARMED POLICE FORCES (EXTENSION OF LAWS) ACT, 1952.

(2) It extends to the whole of India *[* * *].

[*] The words "except the State of Jammu and Kashmir" were omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), Section 2 and Schedule (1-11-1956).

2. **Definition.**—In this Act, "armed police force" means any Police force constituted by any of the enactments specified in the Schedule for the time being in force.

3. **Extension of disciplinary laws of any State to members of the armed police force of that State when serving outside that State.**—Where any detachment of an armed police force of a State is serving in any part of any other State, whether independently or by being attached to the police force of that other State, then, notwithstanding anything contained in section 3 of the Police Act, 1888, every member of the said detachment, while discharging the functions of a police officer in that other State, shall continue to be subject to the same laws in respect of discipline and liabilities as would have been applicable to him, if he had been discharging those functions within the State to which the said force belongs.

Note.—Before this enactment when units of Special Armed Police Forces belonging to one State served in another State, while doing so, their rights and liabilities were, under the Police Act, 1888, those of police officers of the State in which they happened to be serving at the time. Henceforth, by virtue of this section they, while serving in the other State, shall continue to be subject to the same laws in respect of discipline and liabilities as would have been applicable to them, if they had been discharging those functions within the State to which the said force belonged.

4. **Power to add to, or omit from, the Schedule.**—The Central Government may, by notification in the Official Gazette, add to, or omit from, the Schedule any enactment and on the publication of such a notification, the Schedule shall be deemed to be amended accordingly.

5. Repeal.—[Repealed by the Repealing and Amending Act, 1957 (XXXVI of 1957), Section 2 and Schedule I.]

SCHEDULE

(See sections 2 and 4)

1. The Bengal Military Police Act, 1892 (V of 1892).
2. The Eastern Frontier Rifles (Bengal Battalion) Act, 1920 (Bengal Act No. II of 1920).
3. The Bombay State Reserve Police Force Act, 1951 (Bombay Act No. XXXVIII of 1951).
4. The Central Provinces and Berar Special Armed Constabulary Act, 1942 (C. P. and Berar Act No. VII of 1942).
5. The Madhya Bharat Special Armed Force Act, Samvat 2007 (Madhya Bharat Act No. LXXV of 1950).
6. The Orissa Military Police Act, 1946 (Orissa Act No. VII of 1946).
7. The Rajasthan Armed Constabulary Act, 1950 (Rajasthan Act No. XII of 1950).
8. The United Provinces Provincial Armed Constabulary Act, 1948 (U. P. Act No. XL of 1948).

[THE] STATE BANK OF HYDERABAD ACT, 1956
(ACT LXXIX OF 1956)

[The text of the Act printed here is as on 30-7-1973.]

CONTENTS

CHAPTER I
PRELIMINARY
SECTIONS
1. Short title and commencement.
2. Definitions.

CHAPTER II
RENAMING OF THE HYDERABAD STATE BANK AND TRANSFER OF ITS SHARE CAPITAL TO THE RESERVE BANK
3. Change of name of Hyderabad State Bank.
4. Head office and branches of Hyderabad Bank.

5. Transfer of share capital of Hyderabad State Bank to Reserve Bank.

6. Compensation to share-holders of Hyderabad State Bank.

7. Certain officers of the Hyderabad State Bank to vacate office.

8. Special provisions regarding existing officers and employees.

CHAPTER III

CAPITAL OF THE HYDERABAD BANK

9. Authorised Capital.

10. Issued Capital.

CHAPTER IV

MANAGEMENT OF THE HYDERABAD BANK

11 to 23. [Repealed.]

CHAPTER V

BUSINESS TO BE CARRIED ON BY THE HYDERABAD BANK

24 to 26. [Repealed.]

CHAPTER VI

RESERVE FUND ACCOUNTS AND AUDIT

27. Reserve Fund.

28 to 31. [Repealed.]

CHAPTER VII

MISCELLANEOUS

32 to 40. [Repealed.]

41. Power of Central Government to make rules.

42 and 43. [Repealed.]

44. References to Hyderabad State Bank in other laws.

45 and 46. [Repealed.]

THE FIRST SCHEDULE [Repealed].

THE SECOND SCHEDULE

STATEMENT OF OBJECTS AND REASONS

"The Hyderabad State Bank is constituted under the Hyderabad State Bank Act (No. XIX of 1350 Fasli). Fifty-one per cent. of the bank's share capital is held by the Government of Hyderabad and the rest by private shareholders. The State Government enjoys certain powers in regard to its management. The bank is functioning at present as the agent of the Reserve Bank for conducting Government business in the Hyderabad State. With the reorganisation of the States, the offices of the Hyderabad State Bank conducting Government Treasury work will be distributed over three States, namely, Andhra Pradesh, Bombay and Mysore. It is necessary to provide (i) for the devolution on one single authority of the functions of the State Government of Hyderabad in relation to the bank, (ii) for the more effective performance, by the Bank, of the Government business as agent of the Reserve Bank, and (iii) for unified control and management of the bank in order to enable it to implement a programme of subsidised extension of banking facilities to the public. It is accordingly proposed that the shares of the Hyderabad State Bank should be vested in the Reserve Bank of India and compensation be paid to the existing shareholders at Rs. 94-4-6 for each share (of the face value of Rs. 100 O.S. in the now obsolete Hyderabad currency equivalent to Rs. 85-11-5 in Indian currency).

2. The corporate character of the existing Hyderabad State Bank is being retained but all the other provisions of the Hyderabad State Bank Act, 1350 F., are being repealed and replaced by more suitable provisions contained in the Bill.

3. The Bill makes certain consequential and incidental amendments in Reserve Bank of India Act, 1934, and in the Banking Companies Act, 1949."—Gaz. of Ind., 1956, Extra., Pt. II, Sec. 2, p. 799.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act XXXVIII of 1959.

—Repealed in part by Acts XXXVIII of 1959; LVIII of 1960.

[THE] STATE BANK OF HYDERABAD ACT, 1956
(ACT LXXIX OF 1956)*

[22nd December, 1956.]

An Act to transfer the share capital of the Hyderabad State Bank to the Reserve Bank of India and to provide for its proper management and other matters connected therewith or incidental thereto.

Whereas in view of the reorganisation of States, it is necessary to provide for the devolution of functions of the State Government of Hyderabad in relation to the Hyderabad State Bank on one single authority;

And whereas in order to secure the more efficient performance of banking and treasury functions by the Hyderabad State Bank as agent to the Reserve Bank of India and to enable the Reserve Bank of India to assist the Hyderabad State Bank, by the grant of subsidies or otherwise, to extend banking facilities to the public on a larger scale, it is expedient and necessary to provide for the transfer of the share capital of the Hyderabad State Bank to the Reserve Bank of India and for its proper management and for other matters connected therewith or incidental thereto:

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1956, Extra., Pt. II, Sec. 2, page 799.

CHAPTER I
PRELIMINARY

1. Short title and commencement.—(1) This Act may be called THE STATE BANK OF HYDERABAD ACT, 1956.

(2) It shall be deemed to have come into force on the 22nd day of October, 1956.

2. Definition.—In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 22nd day of October, 1956;

(b) "Hyderabad Bank" means the Hyderabad State Bank renamed under sub-section (1) of section 3, as the State Bank of Hyderabad;

(c) "Hyderabad State Bank" means the Hyderabad State Bank constituted and incorporated under the Hyderabad State Bank Act, 1350 F.;

(d) "prescribed" means prescribed by regulations made under this Act;

(e) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

*[(f) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955.]

[*] Inserted by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Part VII (1-10-1959).

CHAPTER II
RENAMING OF THE HYDERABAD STATE BANK AND TRANSFER OF ITS SHARE CAPITAL TO THE RESERVE BANK

3. Change of name of Hyderabad State Bank.—(1) On the appointed day, the body corporate constituted by the Hyderabad State Bank Act, 1350 F., and known as the Hyderabad State Bank shall be renamed as the State Bank of Hyderabad *[* * *].

†[(2) The said body corporate shall consist of the State Bank and other shareholders, if any, for the time being, of the Hyderabad Bank.

(2-a) The Hyderabad Bank shall carry on the business of banking and other business in accordance with the provisions of the State Bank of India (Subsidiary Banks) Act, 1959, and shall have power to acquire and hold property, whether movable or immovable, for the purpose of its business and to dispose of the same.]

(3) The change of name of the Hyderabad State Bank by sub-section (1) shall not affect any rights or obligations of that Bank, or render defective any

legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the Hyderabad State Bank by its former name may be continued by or against it by its new name.

[°] Certain words were omitted by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).

[†] Substituted for sub-section (2), ibid.

4. Head office and branches of Hyderabad Bank.—(1) Unless otherwise directed by the Central Government by notification in the Official Gazette, the Head Office of the Hyderabad Bank shall be at Hyderabad.

(2) The Hyderabad Bank shall continue to maintain every branch and agency of the Hyderabad State Bank in existence immediately before the appointed day *[and shall not discontinue any branch or establish any new branch except in consultation with the State Bank and with the approval of the Reserve Bank.]

[°] Substituted for certain words by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).

5. Transfer of share capital of Hyderabad State Bank to Reserve Bank.—On the appointed day, all shares in the capital of the Hyderabad State Bank shall be transferred to, and shall vest in, the Reserve Bank free of all trusts, liabilities and encumbrances.

Note.—Fifty-one per cent. of the bank's share capital was held by the Government of Hyderabad and the rest by private management.

6. Compensation to shareholders of Hyderabad State Bank.—(1) The Reserve Bank shall pay to the State Government of Hyderabad and every other person who, immediately before the appointed day, is registered as a holder of shares in the Hyderabad State Bank, as compensation for the transfer of such shares to the Reserve Bank under section 5, an amount calculated at the rate of ninety-four rupees four annas and six pies in Indian currency for each share of the face value of one hundred Osmania Sicca rupees.

(2) Notwithstanding the transfer of the shares in the capital of the Hyderabad State Bank to the Reserve Bank, any shareholder who, immediately before the appointed day, was entitled to payment of dividend on the shares of the Hyderabad State Bank held by him shall be entitled to receive from the Hyderabad Bank all dividends declared by the Hyderabad State Bank in respect of his shares for any year which ended before the appointed day and remaining unpaid.

(3) Notwithstanding anything contained in the Hyderabad State Bank Act, 1350 F., no such shareholder shall be entitled as of right to any dividend on the shares of the Hyderabad State Bank held by him in respect of any period before the appointed day for which the Bank had not declared a dividend:

Provided that the Central Government may, in respect of any such period, authorise the payment of dividend at such rate as it may specify if it is satisfied that there is sufficient balance of profit available after such provisions and contributions for the purposes referred to in section 28 as the Reserve Bank considers necessary have been made.

(4) Nothing contained in sub-section (1) shall affect the rights inter se between the holder of any share in the Hyderabad State Bank and any other person who may have an interest in such share and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share but not against the Reserve Bank.

7. Certain officers of the Hyderabad State Bank to vacate office.—(1) Every person holding office as director (including the President and the managing director) or as deputy managing director, in the Hyderabad State Bank immediately before the appointed day, shall be deemed to have vacated that office on the appointed day, and notwithstanding anything contained in this Act or in any other law for the time being in force or in any agreement or contract, such person shall not be entitled to any compensation for the loss of office or for the premature termination of any agreement or contract relating to his employment, except such pension, compensation or other benefit, as the Hyderabad Bank may, with the pre-

vious approval of the Reserve Bank, grant to him having regard to what he would have received, if this Act had not been passed and if his employment had ceased on the appointed day in the ordinary course.

(2) Nothing in sub-section (1) shall be deemed to prevent the Hyderabad Bank from reappointing or re-employing with the previous permission in writing of the Reserve Bank, the managing director or the deputy managing director of the Hyderabad State Bank on such terms and conditions as are agreed upon between him and the Hyderabad Bank and are approved by the Reserve Bank.

8. **Special provisions regarding existing officers and employees.**—(1) Notwithstanding anything contained in any law or contract of service or other document, no appointment made or promotion, increment in salary, pension or allowance or any other benefit granted to any person by the Hyderabad State Bank after the 19th day of December, 1954, and before the appointed day which would not ordinarily have been made or granted or which would not ordinarily have been admissible under the rules or authorisations of the Hyderabad State Bank, or of any provident, pension, or other fund in force before the 19th day of December, 1954, shall have effect or be payable or claimable from the Hyderabad Bank, or from any provident, pension or other fund or from any authority administering any such fund, unless the Reserve Bank has, by general or special order, confirmed the appointment, promotion or increment or has directed the grant of the pension, allowance or other benefit, as the case may be.

(2) Where any officer or other employee of the Hyderabad State Bank has, whether before or after the appointed day, received any amount by reason of any such appointment, promotion or increment or the grant of any such pension, allowance or other benefit, as is referred to in sub-section (1), which has not been confirmed or sanctioned by the Reserve Bank in pursuance of the powers conferred on it by that sub-section, such officer or other employee shall be bound to refund such amount to the Hyderabad Bank and that bank shall be entitled to take all such steps as may be necessary for recovering such amount.

(3) Where any managing director, deputy managing director or other employee of the Hyderabad State Bank has, after the 19th day of Dec. 1954, and before the appointed day, been paid any sum by way of compensation or gratuity, the Hyderabad Bank shall be entitled to claim refund of any sum so paid if the payment is not confirmed by the Reserve Bank by general or special order.

(4) Notwithstanding anything contained in any law for the time being in force, the renaming of the Hyderabad State Bank or the transfer of its share capital to the Reserve Bank shall not entitle any officer or other employees of that bank to any compensation to which he may be entitled under any such law, and no such claim shall be entertained by any Court, tribunal or other authority.

CHAPTER III

CAPITAL OF THE HYDERABAD BANK

*[9. **Authorised capital.**—(1) The authorised capital of the Hyderabad Bank shall be one crore of rupees, divided into shares of one hundred rupees each.

(2) Notwithstanding anything contained in this section, the State Bank may, with the approval of the Reserve Bank, authorise the Hyderabad Bank to increase or reduce its authorised capital:

Provided that, where the authorised capital is so increased, the shares issued shall be of the denomination specified in sub-section (1).]

[*] Substituted for former Section 9 by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).

*[10. **Issued capital.**—(1) The issued capital of the Hyderabad Bank shall, on the day on which the amendments to this Act made by the State Bank of India (Subsidiary Banks) Act, 1959, take effect†, be of such amount as the State Bank, with the approval of the Reserve Bank, may fix in this behalf, so however that the amount shall be so fixed as to consist only of fully paid-up shares of one hundred rupees each.

(2) All shares in the issued capital of the Hyderabad Bank shall, on that day, vest in the State Bank.

(3) Without prejudice to the provisions contained in sub-section (4), the Hyderabad Bank may, with the approval of the State Bank and the Reserve Bank, increase, from time to time, its issued capital and the capital so increased shall consist of fully paid-up shares to be issued in such manner as the State Bank may, with the approval of the Reserve Bank, direct:

Provided that the issued capital shall be so increased that at no time shall the State Bank hold less than fifty-five per cent of the issued capital of the Hyderabad Bank.

(4) The State Bank shall, as soon as may be after the determination, if any, of the amount of compensation by the Tribunal under the State Bank of India (Subsidiary Banks) Act, 1959, consider whether any increase or reduction of the issued capital of the Hyderabad Bank as fixed under sub-section (1) by way of adjustment by transfer from, or to, the reserves of the Hyderabad Bank or in any other manner, is necessary, expedient or appropriate and may, thereafter, with the approval of the Reserve Bank, direct the Hyderabad Bank to increase or reduce its issued capital,]

[°] Substituted for former Section 10 by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).

[†] The said amendments came into force with effect from 1st October, 1959.

CHAPTER IV

MANAGEMENT OF THE HYDERABAD BANK

11 to 23.—[Repealed by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).]

CHAPTER V

BUSINESS TO BE CARRIED ON BY THE HYDERABAD BANK

24, 25 and 26.—[Repealed by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).]

CHAPTER VI

RESERVE FUND ACCOUNTS AND AUDIT

°[**27. Reserve Fund.**—(1) The reserve fund of the Hyderabad Bank shall, subject to the provisions of sub-section (4) of section 10, and sub-section (2) of this section, consist of—

(a) on the day on which the amendments to this Act made by the State Bank of India (Subsidiary Banks) Act, 1959, take effect, such sum as the State Bank, with the approval of the Reserve Bank, may determine; and

(b) after that day, the sum aforesaid together with such further sums as may be transferred to the reserve fund by the Hyderabad Bank out of its annual net profits before declaring a dividend.

(2) The State Bank shall, as soon as may be after the determination, if any, of the amount of compensation by the Tribunal, under the State Bank of India (Subsidiary Banks) Act, 1959, consider whether any increase or reduction of the reserve fund of the Hyderabad Bank is necessary by way of adjustment by transfer from or to any account or towards provision for bad and doubtful debts, depreciation in assets, or contingencies or for any other purpose and may thereafter, with the approval of the Reserve Bank, direct the Hyderabad Bank to so increase or reduce, its reserve fund.]

[°] Substituted for former Section 27 by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).

28 to 31.—[Repealed by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).]

CHAPTER VII
MISCELLANEOUS

32 to 40.—[Repealed by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).]

41. **Power of Central Government to make rules.**—(1) The Central Government may, in consultation with the Reserve Bank, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner of, and the procedure for payment of, compensation° under this Act, including the requirements subject to which the payment shall be made;

(b) the determination of persons to whom the said compensation shall be payable in all cases including cases where shares have been held by more than one person, or where they have been transferred before the appointed day, but the transfer has not been registered or where the shareholder is dead;

(c) the circumstances under which claims for payment of the said compensation from persons claiming through or under a shareholder may be entertained;

(d) the requirements to be complied with before receipt of the said compensation by a shareholder, whose share certificate has been lost, destroyed, mutilated or stolen;

(e) the requirements, subject to which information regarding the payment of the said compensation may be granted or refused and the conditions subject to which such information may be given.

(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

[°] For Hyderabad State Bank (Compensation) Rules, 1956, see Gaz. of Ind., 4-10-1956, Pt. II, Sec. 3, Extra., page 2027 (S.R.O. 2274).

42. [Repealed by the State Bank of India (Subsidiary Banks) Act 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).]

43. **Amendment of certain enactments.**—[Omitted by Act XXXVIII of 1959, Section 64, Schedule III, Pt. VII (1-10-1959) and Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

44. **References to Hyderabad State Bank in other laws.**—On and from the appointed day, any reference to the Hyderabad State Bank in any law (other than this Act) or in any contract or other instrument shall, except as otherwise provided in any general or special order made by the Central Government, be deemed to be a reference to the Hyderabad Bank.

45. [Repealed by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64, Schedule III, Pt. VII (1-10-1959).]

46. **Repeal and saving.**—[Omitted by Act XXXVIII of 1959, Section 64, Schedule III, Pt. VII (1-10-1959) and Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

THE FIRST SCHEDULE

Declaration of fidelity and secrecy.

[Repealed by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VII (1-10-1959).]

THE SECOND SCHEDULE

[Omitted by Act XXXVIII of 1959, Section 64, Schedule III, Pt. VII (1-10-1959) and repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Sec. 2 and Schedule I (26-12-1960).]

[THE] STATE BANK OF INDIA ACT, 1955
(ACT XXIII of 1955)

[The text of the Act printed here is as on 30-7-1978.]

CONTENTS

CHAPTER I
PRELIMINARY

SECTIONS

1. Short title and commencement.
2. Definitions.

CHAPTER II
INCORPORATION AND SHARE CAPITAL OF STATE BANK

3. Establishment of the State Bank.
4. Authorised capital.
5. Issued capital.

CHAPTER III
TRANSFER OF UNDERTAKING OF THE IMPERIAL BANK TO STATE BANK

6. Transfer of assets and liabilities of the Imperial Bank to the State Bank.
7. Transfer of service of existing officers and employees of the Imperial Bank to the State Bank.
8. Existing provident and other funds of the Imperial Bank.
9. Compensation to be given to shareholders of Imperial Bank.

CHAPTER IV
SHARES

10. Transferability of shares.
11. Restrictions on individual holdings.
12. Shares to be approved securities.
13. Principal register of shareholders.
14. Branch registers.
15. Trusts not to be entered on the register.

CHAPTER V
MANAGEMENT

16. Offices, branches and agencies.
17. Management.
18. Central Board to be guided by directions of Central Government.
19. Composition of the Central Board.
20. Term of office of chairman, managing director, etc.
21. Local Boards.
21A. Term of office of Member of Local Board.
21B. Powers of Local Board.
21C. Local Committees.
22. Disqualifications for directorship of Central Board or membership of Local Boards or Committees.
23. Vacation of office of directors, etc.,
24. Removal from office of directors, etc.
25. Casual vacancies.
26. Remuneration of directors.
27. Powers and remuneration of chairman.
28. Powers and remuneration of vice-chairman.
29. Powers and remuneration of managing director.
30. Executive and other committees of the Central Board.
31. Meetings of the Central Board.
31A. Meetings of Local Board.

CHAPTER VI
BUSINESS OF THE STATE BANK

32. State Bank to act as agent of the Reserve Bank.
33. Other business which the State Bank may transact.
34. Business which the State Bank may not transact.
35. State Bank may acquire the business of other banks.

CHAPTER VII
FUNDS, ACCOUNTS AND AUDIT

36. Integration and Development Fund.
37. Reserve Fund.
38. Disposal of profits.
39. Books to be balanced each year.
40. Returns.
41. Audit.
42. Balance sheet etc., of State Bank may be discussed at general meeting.

CHAPTER VIII
MISCELLANEOUS

43. State Bank may appoint officers and other employees.
44. Obligation as to fidelity and secrecy.
45. Bar to liquidation of State Bank.
46. Indemnity of directors and members of Local Boards and Local Committees, etc.
47. Defects in appointment or constitution not to invalidate acts or proceedings.
48. Omitted.
49. Power of Central Government to make rules.
50. Power of Central Board to make regulations.
51. Requirements of foreign law to be complied with in certain cases.

52.
53. [Repealed.]
54.

55. No proceeding to lie in India against Imperial Bank after appointed day.
56. References to the Imperial Bank, the Bank of Bengal, etc.. in other laws.
57. Dissolution of Imperial Bank, etc.

THE FIRST SCHEDULE — COMPENSATION FOR THE TRANSFER OF SHARES OF THE IMPERIAL BANK TO THE RESERVE BANK.

THE SECOND SCHEDULE — DECLARATION OF FIDELITY AND SECRECY.

THE THIRD SCHEDULE — [Repealed.]

THE FOURTH SCHEDULE — [Repealed.]

THE FIFTH SCHEDULE — [Repealed.]

STATEMENT OF OBJECTS AND REASONS

"The Reserve Bank of India had appointed in August, 1951 a Committee of Direction for conducting an all-India rural credit survey. The General Report of the survey embodying the Committee's recommendations was received last year. The Report makes comprehensive recommendations relating to numerous aspects of the problem of rural credit. One of the important recommendations and an integral part of the solution of the rural credit problem propounded by the Committee is the setting up of a State Bank of India as 'one strong integrated State-partnered commercial banking institution with an effective machinery of branches spread over the whole country for stimulating banking development by providing vastly extended remittance facilities for co-operative and other banks and following a policy which would be in effective consonance with national policies adopted by Government without departing from the canons of sound business'. Such a State Bank of India is envisaged as coming into being by the amalgamation of the Imperial Bank of India with certain "State-associated" banks. On the 28th December, 1954, Government announced that they accepted in principle this recommendation of the Committee and that they had decided as a first step towards the setting up of such an institution, to assume effective control over the Imperial Bank. This Bill seeks to give effect to this decision.

Suitable provisions are made relative to the acquisition of the undertaking of the Imperial Bank, the taking over of its business and staff, the payment of compensation to shareholders, the setting up of an appropriate machinery for the governance of the State Bank of India, the business which the Bank may and may not transact, etc. It is contemplated that the Reserve Bank will always hold a minimum shareholding of 55 per cent. in the paid-up capital of the Bank. By virtue of this holding and the composition of the Board of Directors of the Bank as well as by virtue of the power to give directions in matters of policy involving public interest vested in the Central Government, it is provided that the general working of the State Bank of India shall be responsive to and in consonance with Government policies while the autonomy of the institution in its day-to-day working will be fully maintained. Amendments necessary to the Reserve Bank of India Act, 1934, and to the Banking Companies Act, 1949, consequently to the establishment of this institution, have been provided for in the Third and Fourth Schedules to the Bill."—Gaz. of Ind., 1955, Extra., Pt. II, Sec. 2, page 185.

AMENDING ACT XXXIII OF 1955

STATEMENT OF OBJECTS AND REASONS

"The Scheme of the State Bank of India Act, 1955, envisaged the State Bank of India coming into existence and the Imperial Bank of India going out of existence simultaneously on the 'appointed day' (being the day notified in this behalf by the Central Government) and provided for the automatic transfer of all the assets and liabilities of the undertaking of the Imperial Bank of India from that institution to the State Bank of India. While there was no difficulty about such transfer so far as the assets and liabilities of the Imperial Bank situated in India were concerned, Government were advised that it was doubtful whether such an automatic transfer of assets and liabilities made by virtue of an Indian law from one corporate body to another would be recognised and given effect to in foreign countries in respect of the assets and liabilities of the foreign branches of the

Imperial Bank of India. In the light of the advice obtained on this legal issue from counsel in the different foreign countries concerned, it was decided that it would be advisable to amend the scheme of the Act and to provide for the continued existence of the Imperial Bank of India as a corporate entity beyond the 'appointed day' to enable it to make over its business in its foreign branches by execution of documentary transfers, if necessary, to the corresponding branches of the State Bank of India to be opened there. It was, therefore, necessary to amend the State Bank of India Act, 1955, and as this had to be done prior to the 1st of July, 1955, which had been notified as the 'appointed day' under the State Bank of India Act, the State Bank of India (Amendment) Ordinance, 1955, was promulgated on the 23rd June, 1955. The present Bill seeks to convert that Ordinance into an Act."—Gaz. of Ind., 1955, Extra., Pt. II, Sec. 2, p. 268.

AMENDING ACT 35 OF 1964

"The business and activities of the State Bank of India have increased very considerably, since the Bank was established on 1st July, 1955. It is, therefore, considered desirable that provision should be made for facilitating the creation of a larger number of local head offices, for certain changes in the composition of the Central and Local Boards of the Bank and for vesting some specific powers in the Local Boards so as to enable the Bank to dispose of its business expeditiously and to improve the quality of its services generally.

2. An integration and development fund was created in 1955 for financing the development activities of the Bank. As the balance in the fund is now adequate, it is proposed to modify the relevant provisions of the Act, so as to limit the accumulation in the fund at any time to a sum of Rs. 5 crores."—S.O.R., Gaz. of Ind., 21-12-1963, Pt. II, Sec. 2, Extra., p. 1067.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XXXIII of 1955; XXI of 1957; XXVI of 1959; XXXVIII of 1959; XXXV of 1962; LVI of 1962; LII of 1963; XXXV of 1964; LVIII of 1968.

—Extended by Regns. VI of 1963; VII of 1963; XI of 1963.

—Repealed in part by Act LVIII of 1960.

COGNATE ACTS AND PROVISIONS

1. Banking Regulation Act, X of 1949.
2. Banking Companies (Legal Practitioners' Clients' Accounts) Act, XLVI of 1949.
3. Reserve Bank of India Act, II of 1934.
4. State Bank of Hyderabad Act, LXXIX of 1956.
5. State Bank of India (Subsidiary Banks) Act, XXXVIII of 1959.
6. Industrial Development Bank of India Act, XVIII of 1964.
7. International Monetary Fund and Bank Act, Ordn. XLVII of 1945.

[THE] STATE BANK OF INDIA ACT, 1955

(ACT XXIII of 1955)°

[8th May, 1955.]

An Act to constitute a State Bank for India, to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto.

Whereas for the extension of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for diverse other public purposes it is expedient to constitute a State Bank for India, and to transfer to it the undertaking of the Imperial Bank of India and to provide for other matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

[°] For Statement of Objects and Reasons, see Gaz. of Ind., 1955, Extra., Pt. II, Sec. 2, p. 185.

CHAPTER I
PRELIMINARY

1. Short title and commencement.—(1) This Act may be called THE STATE BANK OF INDIA ACT, 1955.

(2) It shall come into force on such date* as the Central Government may, by notification in the Official Gazette, appoint.

[*] The Act came into force on 1-7-1955—See S.R.O. 1077 dated 14-5-1955, Gaz. of Ind., 1955 Pt. II, Sec. 3, page 869.

The Act has been extended to the Union territories of—

(1) Goa, Daman and Diu by Regn. XI of 1963 (1-2-1965);

(2) Pondicherry by Regn. VII of 1963 (1-10-1963); and

(3) Dadra and Nagar Haveli by Regn. VI of 1963 (1-7-1965).

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "appointed day" means the date on which this Act comes into force;

(b) "Central Board" means the Central Board of Directors of the State Bank;

*[(bb) "Chairman" means the Chairman of the Central Board.]

(c) "goods" includes bullion, wares and merchandise;

(d) "Imperial Bank" means the Imperial Bank of India constituted under the Imperial Bank of India Act, 1920;

°[(dd) "Local Board" means a Local Board constituted under section 21.]

(e) "prescribed" means prescribed by regulations made under this Act;

(f) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

(g) "State Bank" means the State Bank of India constituted under this Act;

†[(h) "subsidiary bank" means a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959.]

°[(i) "Vice-Chairman" means the Vice-Chairman of the Central Board.]

[*] Inserted by the State Bank of India (Amendment) Act, 1964 (35 of 1964), Section 2 (1-12-1964).

[†] Inserted by the Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), Section 64 and Schedule III, Pt. VI (10-9-1959).

CHAPTER II
INCORPORATION AND SHARE CAPITAL OF STATE BANK

3. Establishment of the State Bank.—(1) A Bank to be called the State Bank of India shall be constituted to carry on the business of banking and other business in accordance with the provisions of this Act and for the purpose of taking over the undertaking of the Imperial Bank.

(2) The Reserve Bank, together with such other persons as may from time to time become shareholders in the State Bank in accordance with the provisions of this Act, shall, so long as they are shareholders in the State Bank, constitute a body corporate with perpetual succession and a common seal under the name of the State Bank of India, and shall sue and be sued in that name.

(3) The State Bank shall have power to acquire and hold property, whether movable or immovable, for the purposes for which it is constituted and to dispose of the same.

Section 2 — Note 1

(1) The statutory powers of the State Bank are exercisable by the Central Board, that is, the Central Board of Directors of the Bank, Order of dismissal of the Bank employee passed by Staff Superintendent is ultra vires. AIR 1968 Cal 59 (63) = 1968 Lab IC 127.

Section 3 — Note 1

(1) An employee of the State Bank of India is not a civil servant of the Union Government and therefore Articles 311 and 320 of the Constitution have no application to his case. AIR 1958 Pat 418 (419) — 37 Pat 431 (DB).

4. Authorised capital.—Subject to the provisions of this Act, the authorised capital of the State Bank shall be twenty crores of rupees divided into twenty lakhs of fully paid-up shares of one hundred rupees each:

Provided that the Central Government may increase or reduce the authorised capital as it thinks fit, so however that the shares in all cases shall be fully paid-up shares of one hundred rupees each.

5. Issued capital.—(1) The issued capital of the State Bank shall, on the appointed day, be five crores sixty-two lakhs and fifty thousand rupees divided into five lakhs sixty-two thousand and five hundred shares, all of which shall, on the appointed day, stand allotted to the Reserve Bank in lieu of the shares of the Imperial Bank *[transferred to and vested in it under section 6.]

(2) The Central Board may from time to time increase the issued capital but no increase in the issued capital shall be made in such a manner that the Reserve Bank holds at any time less than fifty-five per cent, of the issued capital of the State Bank.

(3) No increase in the issued capital beyond twelve crores and fifty lakhs of rupees shall be made under sub-section (2) without the previous sanction of the Central Government.

[*] Substituted and deemed always to have been substituted for "transferred to it by paragraph 2 of the First Schedule" by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 2 and 8.

CHAPTER III

TRANSFER OF UNDERTAKING OF THE IMPERIAL BANK TO STATE BANK

6. Transfer of assets and liabilities of the Imperial Bank to the State Bank.—(1) Subject to the other provisions contained in this Act, on the appointed day,—

(a) all shares in the capital of the Imperial Bank shall be transferred to, and shall vest in, the Reserve Bank, free of all trusts, liabilities and encumbrances, and

(b) the undertaking of the Imperial Bank shall be transferred to, and shall vest in the State Bank.

(2) The undertaking of the Imperial Bank shall be deemed to include all rights, powers, authorities and privileges, and all property, movable and immovable, including cash balances, reserve funds, investments and all other interests and rights in, or arising out of, such property as may be in the possession of that Bank immediately before the appointed day, and all books, accounts, and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations of whatever kind then existing of that Bank.

*[(3) Unless otherwise expressly provided by or under this Act, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the Imperial Bank is a party or which are in favour of the Imperial Bank shall be of as full force and effect against or in favour of the State Bank, as the case may be, and may be enforced or acted upon as fully and effectually as if instead of the Imperial Bank the State Bank had been a party thereto or as if they had been issued in favour of the State Bank.]

(4) If on the appointed day any suit, appeal or other legal proceeding of whatever nature, is pending by or against the Imperial Bank, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the State Bank of the undertaking of the Imperial Bank or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the State Bank.

[*] Substituted, and deemed always to have been substituted, for sub-section (3), by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 3 and 8.

7. Transfer of service of existing officers and employees of the Imperial Bank to the State Bank.—(1) Every officer or other employee of the Imperial Bank (excepting the managing director, the deputy managing director and other directors) in the employment of the Imperial Bank immediately before the appointed day shall, on and from the appointed day, become an officer or other employee, as the case may be, of the State Bank, and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day if the undertaking of the Imperial Bank had not vested in the State Bank, and shall continue to do so unless and until his employment in the State Bank is terminated or until his remuneration, terms or conditions are duly altered by the State Bank.

(2) Any person who, on the appointed day, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit from the Imperial Bank or any provident, pension or other fund or any authority administering such fund shall be entitled to be paid by, and to receive from, the State Bank or any provident, pension or other fund or any authority administering such fund the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), no appointment made or promotion, increment in salary, pension, allowance or any other benefit granted to any person after the 19th day of December, 1954, and before the appointed day which would not ordinarily have been made or granted or which would not ordinarily have been admissible under the rules or authorisations of the Imperial Bank or of any provident, pension or other fund in force prior to the 19th day of December, 1954, shall have effect or be payable or claimable from the State Bank or from any provident, pension or other fund or from any authority administering the Fund, unless the Central Government has, by general or special order, confirmed the appointment, promotion or increment or has directed the continued grant of the pension, allowance or other benefit, as the case may be.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Imperial Bank from that Bank to the State Bank shall not entitle such officer or other employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, tribunal or other authority.

(5) Any person holding office as managing director, deputy managing director, director or member of any Local Board of the Imperial Bank immediately before the appointed day shall be deemed to have vacated his office as such on the appointed day, and notwithstanding anything contained in this Act or in any other law for the time being in force or in any agreement or contract, he shall not be entitled to any compensation from the Imperial Bank or the State Bank for the loss of office or for the premature termination of any agreement or contract relating to his employment, except such pension, compensation or other benefit which the State Bank may grant to him, having regard to what that person would have received as an officer of the Imperial Bank if this Act had not been passed and if he had retired from his employment in the ordinary course.

Section 7 — Note 1

(1) The effect of Section 7 (1) of the Act is that the service of any employee of the Imperial Bank which was transferred to the State Bank may be terminated by the State Bank, in accordance with the provisions of the State Bank of India Act, irrespective of the person who had appointed him. Under Sections 7 (1) and 43 of the State Bank of India Act, read with the General Clauses Act the State Bank shall have the power to dismiss its employees. The statutory powers belonging to the State Bank which is a statutory corporation are exercisable by its Central Board as defined by Section 2 (b), to mean the Central Board of Directors of the Bank. AIR 1968 Cal 59 (68) = 1968 Lab IC 127.

(6) Where any managing director, deputy managing director, director, officer or other employee of the Imperial Bank has, after the 19th day of December, 1954, and before the appointed day, been paid any sum by way of compensation or gratuity, the State Bank shall be entitled to claim refund of any sum so paid if the payment is not confirmed by the Central Government by general or special order.

8. Existing Provident and other funds of the Imperial Bank.—For the persons who immediately before the appointed day are the trustees of the following funds, that is to say,—

(a) the Imperial Bank of India Employees' Provident Fund;

(b) the Imperial Bank of India Employees' Pension and Guarantee Fund;

(c) The Bank of Bombay Officers' Pension and Guarantee Fund;

(d) The Bank of Madras Pension and Gratuity Fund; and

(e) the Bank of Madras Officers' Provident and Mutual Guarantee Fund;

there shall be substituted as trustees such persons as the Central Government may, by general or special order, specify.

9. Compensation to be given to shareholders of Imperial Bank.—(1) Every person who immediately before the appointed day is registered as a holder of shares in the Imperial Bank shall be entitled to compensation in accordance with the provisions contained in the First Schedule.

(2) Nothing contained in sub-section (1) shall affect the rights inter se between the holder of any share in the Imperial Bank and any other person who may have an interest in such share, and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the Reserve Bank.

CHAPTER IV

SHARES

10. Transferability of shares.—(1) Save as otherwise provided in sub-section (2), the shares of the State Bank shall be freely transferable.

(2) Nothing contained in sub-section (1) shall entitle the Reserve Bank to transfer any shares held by it in the State Bank if such transfer will result in reducing the shares held by it to less than fifty-five per cent. of the issued capital of the State Bank.

11. Restrictions on individual holdings.—(1) No person shall be registered as a shareholder in respect of any shares held by him, whether in his own name or jointly with any other person, in excess of two hundred shares, or be entitled to payment of any dividend on the excess shares held by him, or to exercise any of the rights of a shareholder in respect of such excess shares otherwise than for the purpose of selling them;

Provided that nothing contained in this sub-section shall apply to—

(a) the Reserve Bank;

(b) a corporation;

(c) an insurer as defined in the Insurance Act, 1938;

(d) a local authority;

(e) a co-operative society; and

(f) a trustee of a public or private religious or charitable trust.

(2) Notwithstanding anything contained in sub-section (1), no person referred to in the proviso to that sub-section, other than the Reserve Bank, shall be entitled to exercise voting rights in respect of any shares held by him in excess of one per cent. of the issued capital.

12. Shares to be approved securities.—Notwithstanding anything contained in the Acts hereinafter mentioned in this section, the shares of the State Bank shall be deemed to be included among the securities enumerated in section 20 of the

Indian Trusts Act, 1882, and also to be approved securities for the purposes of the Insurance Act, 1938, and the Banking [Regulation]* Act, 1949.

[*] Substituted for 'Companies' by Act 23 of 1965, Section 11 (1-3-1966).

13. Principal register of shareholders.—The State Bank shall keep at its Central Office, a register, in one or more books of the shareholders (in this Act referred to as the principal register), and shall enter therein the following particulars so far as they may be available:—

(i) the names, addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number;

(ii) the date on which each person is so entered as a shareholder;

(iii) the date on which any person ceases to be a shareholder; and

(iv) such other particulars as may be prescribed.

14. Branch registers.—(1) The State Bank shall cause to be kept at its local head offices branch registers which shall be deemed to be part of the principal register, and in which shall be entered the particulars as in the principal register of shareholders whose registered addresses are within the areas prescribed with reference to each register.

(2) Any shareholder may apply to have his name transferred from one branch register to another in respect of the whole, but not any part, of the shares standing in his name, and the State Bank shall, subject to such condition as may be prescribed, cause the registers to be amended accordingly.

15. Trusts not to be entered on the register.—Notwithstanding anything contained in section 11, no notice of any trust, express, implied or constructive, shall be entered on the principal or any branch register or be receivable by the State Bank.

CHAPTER V

MANAGEMENT

16. Offices, branches and agencies.—(1) Unless otherwise provided by the Central Government, by notification in the Official Gazette, the central office of the State Bank shall be at Bombay.

(2) The State Bank shall have local head offices in Bombay, Calcutta and Madras and at such other places in India as the Central Government, in consultation with the Central Board, may determine.

(3) The State Bank shall maintain as its branches or agencies all branches or agencies of the Imperial Bank which were in existence *[in India] immediately before the appointed day, and no such branch may be closed without the previous approval of the Reserve Bank.

(4) The State Bank may establish branches or agencies at any place in or outside India in addition to the branches or agencies referred to in sub-section (3).

(5) Notwithstanding anything contained in sub-section (4), the State Bank shall establish not less than four hundred branches in addition to the branches referred to in sub-section (3) within five years of the appointed day or such extended period as the Central Government may specify in this behalf and the places where such additional branches are to be established shall be determined in accordance with any such programme as may be drawn up by the Central Government from time to time in consultation with the Reserve Bank and the State Bank, and no branch so established shall be closed without the previous approval of the Reserve Bank.

[*] Inserted, and deemed always to have been inserted, by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 4 and 8.

17. Management.—(1) The general superintendence and direction of the affairs and business of the State Bank shall be entrusted to the Central Board which may exercise all powers and do all such acts and things as may be exercised or done by the State Bank and are not by this Act expressly directed or required to be done by the State Bank in general meeting.

(2) The Central Board in discharging its functions shall act on business principles, regard being had to public interest.

18. Central Board to be guided by directions of Central Government.—(1) In the discharge of its functions, °[including those relating to a subsidiary bank] the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it.

(2) All directions given by the Central Government shall be given through the Reserve Bank and, if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

[°] Inserted by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), Section 64 and Schedule III, Pt. VI (10-9-1959).

19. Composition of the Central Board.—(1) The Central Board shall consist of the following, namely:—

(a) a chairman and a vice-chairman to be appointed by the Central Government in consultation with the Reserve Bank and after consideration, *[* ° °] of the recommendations made by the Central Board in that behalf;

(b) not more than two managing directors, if any, appointed by the Central Board with the approval of the Central Government;

†[(bb) the presidents of the Local Boards appointed under sub-section (5) of section 21, ex officio;

(c) if the total amount of the holdings of the shareholders, other than the Reserve Bank, whose names are on the principal register three months before the date fixed for election of directors is—

(i) not more than ten per cent. of the total issued capital, two directors;

(ii) more than ten per cent. but not more than twenty-five per cent. of such capital, three directors, and

(iii) more than twenty-five per cent. of such capital, four directors,

to be elected in the prescribed manner by such shareholders;

(d) not less than two and not more than six directors to be nominated by the Central Government in consultation with the Reserve Bank, from among persons having special knowledge of the working of co-operative institutions and of rural economy or experience in commerce, industry, banking or finance.]

‡[(2): (3) * ° ° °]

[°] Words "except in the case of first appointments" omitted by the State Bank of India (Amendment) Act, 1964 (35 of 1964), Section 3 (1-12-1964).

[†] Substituted for former clauses (c) and (d) ibid.

[‡] Sub-sections (2) and (3), omitted, ibid.

20. Term of office of chairman, managing director, etc.—(1) The chairman and vice-chairman shall hold office for such term, not exceeding five years, as the Central Government may fix when appointing them and shall be eligible for reappointment.

(2) A managing director shall hold office for such term, not exceeding five years, as the Central Board °[° ° *] may fix when appointing him, and shall be eligible for reappointment.

(3) Subject to the provisions contained in section 19 and in sub-section (5), a director elected under clause (c) of sub-section (1) or nominated under clause (d) of that sub-section shall hold office for four years and thereafter until his successor shall have been duly elected or nominated, and shall be eligible for re-election or renomination.

(4) A director nominated under clause (e) or clause (f) of sub-section 19 shall hold office during the pleasure of the authority nominating him.

†[(5) The following provisions shall have effect in relation to directors nominated under clause (d) of sub-section (1) of section 19, to the Central Board reconstituted for the first time on or after the commencement of the State Bank of India (Amendment) Act, 1964, namely,—

(i) if the number of such directors holding office at the end of one year from the date of such reconstitution is not more than three, then one of such directors, and if such number exceeds three, then two of them, shall retire at the end of the said year;

(ii) if the number of such directors holding office at the end of two years from the date of such reconstitution is not more than three, then one of such directors, and if such number is four, then two of them, shall retire at the end of the said two years;

(iii) if the number of such directors holding office at the end of three years from the date of such reconstitution is not more than two, then one of such directors shall retire at the end of the said three years;

(iv) any such director holding office for a period of four years from the date of such reconstitution shall retire at the end of such period;

(v) the director or directors to retire at the end of each year under clauses (i), (ii) and (iii) shall be determined by lot.]

[°] Words "or in the case of first two appointments, the Central Government" omitted by Act 35 of 1964, Section 4 (1-12-1964).

[†] Substituted for former sub-section (5), ibid.

*[21. **Local Boards.**—(1) There shall be constituted at each place where the State Bank has a local head office, a Local Board which shall consist of the following members, namely:—

(a) the chairman, ex officio;

(b) all such directors elected or nominated to the Central Board under clause (c) or clause (d) of sub-section (1) of section 19 as are ordinarily resident in the area served by the branch register of the local head office;

(c) six members to be nominated by the Central Government in consultation with the Reserve Bank;

(d) one member to be elected in the prescribed manner by the shareholders, other than the Reserve Bank, whose names are entered in the branch register of the local head office, if the total holdings of such shareholders amount to two and a half per cent. or more of the total issued capital:

Provided that a person elected as a member of a Local Board under this clause shall not cease to be a member thereof for reason only that the total holdings as aforesaid fall below two and a half per cent. of the total issued capital, at any time after his election;

(e) the secretary and treasurer of the local head office, appointed by the State Bank, ex officio.

(2) Where as a result of the establishment of any local head office (hereinafter referred to as the new local head office) for any area which is already served by the branch register of another local head office (hereinafter referred to as the existing local head office) a Local Board (hereinafter referred to as the new Local Board) is constituted for the new local head office, any person who is, at the time of such constitution, holding office as a member of a Local Board (hereinafter referred to as the existing Local Board) for an existing local head office under clause (c) or clause (d) of sub-section (1) and is ordinarily resident in the area served by the branch register of the new local head office, shall cease to hold office as member of the existing Local Board and shall become a member of the new Local Board and shall on becoming such member be deemed to have been nominated or, as the case may be, elected to the new Local Board and shall hold office as such member for the unexpired portion of his term of office as a member of the existing Local Board.

(3) Any vacancy caused in the existing Local Board as a result of any member thereof becoming a member of the new Local Board under sub-section (2) shall be deemed to be a casual vacancy and be filled in accordance with the provisions of section 25.

(4) Notwithstanding anything contained in clause (d) of sub-section (1),—

(a) on the reconstitution of an existing Local Board for the first time on or after the commencement of the State Bank of India (Amendment) Act, 1964, or

(b) on the constitution of a new Local Board under sub-section (2) of which an elected member of an existing Local Board does not in pursuance of that sub-section become a member,

the Reserve Bank shall nominate a member in place of the member to be elected under that clause and such nominated member shall be deemed to have been elected under the said clause.

(5) The Governor of the Reserve Bank shall, in consultation with the chairman, appoint—

(a) a member of a Local Board nominated or elected under clause (c) or clause (d) of sub-section (1) to be the president thereof, and

(b) a member of a Local Board holding office under clause (b) or nominated or elected under clause (c) or clause (d) of that sub-section to be vice-president thereof.]

[°] Substituted for former Section 21 by Act 35 of 1964, Section 5 (1-12-1964).

*[21-A. **Term of office of members of Local Board.**—(1) Subject to the provisions contained in this section and in sub-section (2) of section 21, a member of a Local Board nominated under clause (c) of sub-section (1) of section 21 or elected under clause (d) of that sub-section shall hold office for two years and thereafter until his successor has been duly nominated or elected and shall be eligible for renomination or re-election, as the case may be:

Provided that out of the six members nominated under clause (c) of sub-section (1) of section 21, on the constitution of a new Local Board or the reconstitution of an existing Local Board for the first time on or after the commencement of the State Bank of India (Amendment) Act, 1964, three shall retire at the end of one year and three shall retire at the end of two years from the date of the constitution or, as the case may be, reconstitution of that Local Board, and the members to retire at the end of the first year shall be determined by lot.

(2) A member of a Local Board nominated by the Reserve Bank under sub-section (4) of section 21 shall retire at the expiry of one year from the date of such nomination.

(3) A director of the Central Board becoming a member of a Local Board by virtue of the provisions of clause (b) of sub-section (1) of section 21 shall cease to hold office as such member on his ceasing to be a director or on his ceasing to be ordinarily resident in the relevant area.

(4) The president and the vice-president of a Local Board shall each hold office for two years or the remaining period of his office as a member of the Local Board, whichever is shorter, and shall be eligible for reappointment so long as he is a member of the Local Board.

21-B. Powers of Local Board.—Save as may otherwise be prescribed and subject to any general or special directions which the Central Board may give from time to time, a Local Board shall, in respect of the area served by the branch register of the local head office for which the Board has been constituted, exercise all powers and perform all functions and duties of the State Bank in relation to any business that may be carried on or transacted by the State Bank under sub-section (1) of section 32 and clauses (i) (excluding the proviso), (ii), (iii), (v) to (ix), (xa), (xii) to (xv), (xvii), (xviii), (xixb) and (xixc) of section 33 and shall exercise such other powers and perform such other functions and duties as may be conferred on or assigned to it by the Central Board.

21-C. Local Committees.—(1) A Local Committee may be constituted by the Central Board for any area and shall consist of such number of members as may be prescribed.

(2) the chairman shall be an ex officio member of every such Local Committee.

(3) A local Committee shall exercise such powers and perform such functions and duties as the Central Board may confer on or assign to it.]

[*] Sections 21-A, 21-B and 21-C inserted by the State Bank of India (Amendment) Act, 1964 (35 of 1964), Section 6 (1-12-1964).

22. Disqualifications for directorship of Central Board or membership of Local Boards or Committees.—(1) No person shall be qualified to be a director of the Central Board or a member of a Local Board or of a Local Committee if—

(a) he holds the office of director, provisional director, promoter, agent or manager of any banking company already established or advertised as about to be established; or

(b) he is a salaried officer of Government not specially authorised by the Central Government to be a director or member; or

(c) he has been removed or dismissed from the service of Government on a charge of corruption or bribery; or

(d) he holds any office of profit under the State Bank other than the office of chairman, vice-chairman, *[managing director, †[secretary and treasurer] or legal or technical adviser]; or

(e) he is or at any time has been adjudicated an insolvent or has suspended payment of his debts or has compounded with his creditors; or

(f) he is declared lunatic or becomes of unsound mind; or

(g) he is or has been convicted of any offence involving moral turpitude; or

(h) in the case of an elected director, he is not registered as a holder in his own right of unencumbered shares in the State Bank of a nominal value of at least five thousand rupees and in the case of an elected member of a nominal value of at least one thousand rupees:

‡[Provided that in the case of a member of Local Board nominated by the Reserve Bank under sub-section (4) of section 21, the disqualification mentioned in clause (h) shall not operate for a period of six months from his becoming such member.]

(2) No two persons who are partners of the same firm or are directors of the same private company or one of whom is an agent of the other or holds a power of attorney from a firm of which the other is a partner may be directors of the Central Board or members of the same Local Board or Local Committee at the same time.

(3) The appointment, nomination or election as director or member of a Local Board or of a Local Committee of any person who is a member of Parliament or the Legislature of any State shall be void unless within two months of the date of his appointment, nomination or election he ceases to be a member of Parliament or the State Legislature, and if any director or member of a Local Board or of a Local Committee is elected or nominated as a member of Parliament or any State Legislature, he shall cease to be a director or member of the Local Board or of the Local Committee as from the date of such election or nomination, as the case may be.

§[(4) In this section,—

(a) "banking company" has the same meaning as in the Banking Companies Act, 1949;

(b) "manager" means the chief executive officer, by whatever name called, of a banking company;

(c) "private company" has the same meaning as in the Companies Act, 1956.]

[*] Substituted for the words "or managing director" by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), Section 2 (28-8-1959).

[†] Inserted by Act 35 of 1964, Section 7 (1-12-1964).

[‡] Substituted for former proviso, ibid.

[§] Inserted by Act 26 of 1959, Section 2 (28-8-1959).

OBJECTS AND REASONS

Sub-sections 1 (d) and (4).—"Section 22 deals with the disqualifications for appointment as a director of the Central Board of the Bank or local board or local committee. The amendments [made in the year 1959] are intended to remove the prohibition in respect of a legal or technical adviser of the bank being appointed as a member of such boards or committees and to define some of the expressions used in the section."—S.O.R., Gaz. of Ind., 1959, Extra., Pt. II, Sec. 2, page 154.

23. Vacation of office of directors, etc.—If a director of the Central Board or a member of a Local Board or a Local Committee—

(a) becomes subject to any of the disqualifications mentioned in section 22; or

(b) resigns his office by giving notice in writing under his hand, in the case of the chairman and vice-chairman, to the Central Government, and in the case of other directors or members of Local Boards or Committees, to the Central Board, and the resignation is accepted; or

(c) is absent without leave of the Central Board, the Local Board or the Local Committee of which he is a director or member, as the case may be, for more than three consecutive meetings thereof;

his seat shall thereupon become vacant.

°[° ° ° ° ° * * °]

[°] The proviso which was added by the State Bank of India (Amendment) Act, 1957 (XXI of 1957), Section 3, was omitted by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), Section 3 (28-8-1959).

24. Removal from office of directors, etc.—(1) The Central Government may, after consulting the Reserve Bank, remove from office the chairman or the vice-chairman.

(2) The Central Board may, with the approval of the Central Government, remove from office a managing director.

(3) The Central Government, after consulting the Reserve Bank, may remove from office any director nominated under clause (d) of sub-section (1) of section 19 °[or any member of a Local Board nominated under clause (c) of sub-section (1) of section 21] and nominate in his stead another person to fill the vacancy.

(4) The shareholders, other than the Reserve Bank, may, by a resolution passed by majority of the votes of such shareholders holding in the aggregate not less than one-half of the share capital held by all such shareholders, remove any director elected under clause (c) of sub-section (1) of section 19 and elect in his stead another person to fill the vacancy.

(5) The shareholders whose names are entered on a branch register, other than the Reserve Bank, may, by a resolution passed by the votes of the shareholders holding in the aggregate not less than one-half of the share capital on the branch register held by such shareholders, remove any elected member of a Local Board and elect in his stead another person to fill the vacancy.

(6) No person shall be removed from his office under sub-section (1) or sub-section (2) or sub-section (3) unless he has been given an opportunity of showing cause against his removal.

[°] Inserted by Act 35 of 1964, Section 8 (1-12-1964).

25. Casual vacancies.—(1) If the chairman, vice-chairman or a managing director is rendered incapable of discharging his duties by reason of infirmity or otherwise or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may, in the case of the chairman or vice-chairman, in consultation with the Reserve Bank and after considering the recommendations of the Central Board, and the Central Board may, in the case of

a managing director, with the approval of the Central Government, appoint another person to officiate in the vacancy.

*[(2) Where any vacancy occurs before the expiry of the term of office of a director, other than the chairman, vice-chairman or a managing director or of a member of a Local Board other than the secretary and treasurer, the vacancy shall be filled—

(a) in the case of an elected director or member, by election; and
(b) in the case of a director nominated under clause (d) of sub-section (1) of section 19 or a member of a Local Board nominated under clause (c) of sub-section (1) of section 21, by nomination in consultation with the Reserve Bank:

Provided that where the duration of the vacancy in the office of an elected director or member is likely to be less than six months, the vacancy may be filled by the remaining directors or members, as the case may be, by co-opting a person not disqualified under section 22.]

(3) A person elected or nominated or co-opted, as the case may be, under this section shall hold office for the unexpired portion of the term of his predecessor.

[*] Substituted for former sub-section (2) by Act 35 of 1964, Section 9 (1-12-1964).

26. Remuneration of directors.—(1) Without prejudice to the provisions contained in sections 27, 28 and 29, the directors shall be paid such fees and allowances for attending the meetings of the Central Board or of any of its Committees and for attending to any other work of the State Bank as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), no fees shall be payable to a managing director or any other director who is an officer of the Central Government or the Reserve Bank.

27. Powers and remuneration of chairman.—(1) The chairman shall preside at all meetings of the Central Board and, subject to such general or special directions as the Central Board may give, exercise all such powers and do all such acts and things as may be exercised or done by the State Bank.

(2) The chairman shall receive such salary, fees, allowances and perquisites as may be determined by the Central Board with the approval of the Central Government:

Provided that in respect of the first chairman, the Central Government may determine his salary, fees, allowances and perquisites.

28. Powers and remuneration of vice-chairman.—(1) The vice-chairman shall preside at the meetings of the Central Board in the absence of the chairman and subject to the general control of the chairman, exercise such powers and perform such duties as may be entrusted or delegated to him by the Central Board.

(2) The vice-chairman shall receive such salary, fees, allowances and perquisites as may be determined by the Central Board with the approval of the Central Government:

Provided that in respect of the first vice-chairman, the Central Government may determine his salary, fees, allowances and perquisites.

(3) The fact that the vice-chairman exercises any of the powers and does any act or thing for or on behalf of the State Bank shall be conclusive proof of his authority to do so.

29. Powers and remuneration of managing director.— (1) A managing director—

(a) shall be a whole-time officer of the State Bank; and
(b) subject to the general control of the chairman and the vice-chairman, shall exercise such powers and perform such duties as may be entrusted or delegated to him by the Central Board.

(2) A managing director shall receive such salary and allowances as may be determined by the Central Board with the approval of the Central Government:

Provided that in respect of the first managing director or directors, the Central Government may determine the salary and allowances payable to him or them.

30. Executive and other committees of the Central Board.— The Central Board may constitute such and so many committees, including an executive committee, of itself as it deems fit to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Central Board may impose, be delegated to them by the Central Board.

31. Meetings of the Central Board.— (1) The Central Board shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) All questions at the meeting shall be decided by a majority of the votes of the directors present and in the case of equality of votes, the chairman or, in his absence, the vice-chairman shall have a second or casting vote.

(3) A director who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal entered into or proposed to be entered into by or on behalf of the State Bank shall at the earliest possible opportunity disclose the nature of his interest to the Central Board and shall not be present at any meeting of the Central Board when any such contract, loan, arrangement or proposal is discussed unless his presence is required by the other directors for the purpose of eliciting information, and no director so required to be present shall vote on any such contract, loan, arrangement or proposal.

°[Provided that nothing contained in this sub-section shall apply to such director by reason only of his being—

(i) a shareholder (other than a director) holding not more than two per cent. of the paid-up capital in any public company as defined in the Companies Act, 1956, or any corporation established by or under any law for the time being in force in India or any co-operative society, with which or to which the State Bank has entered into or made, or proposes to enter into or make, a contract, loan, arrangement or proposal; or

(ii) a director ex-officio of the State Bank or a director of a subsidiary bank.]

(4) If for any reason neither the chairman nor the vice-chairman is able to be present at a meeting of the Central Board, any director, other than a managing director, authorised by the chairman in writing in this behalf, and in the absence of such authorization, any such director elected by the directors present from amongst themselves, shall preside at the meeting and, in the event of equality of votes, shall have a second or casting vote.

[*] Inserted by Act 56 of 1962, S. 2 (14-12-1962).

°[**31-A. Meetings of Local Boards.**— (1) A Local Board shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) All questions at the meeting shall be decided by a majority of the votes of the members present and in the case of equality of votes, the person presiding at the meeting shall have a second or casting vote.

(3) A member who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal entered into or proposed to be entered into by or on behalf of the State Bank, shall at the earliest possible opportunity, disclose the nature of his interest to the Local Board and shall not be present at any meeting of the Local Board when any such contract, loan, arrangement or proposal is discussed unless his presence is required by the other members for the purpose of eliciting information, and no member so required to be present shall vote on any such contract, loan, arrangement or proposal:

Provided that nothing contained in this sub-section shall apply to such member by reason only of his being—

(i) a shareholder (other than a director) holding not more than two per cent. of the paid-up capital in any public company as defined in the Companies Act, 1956, or any corporation established by or under any law for the time being in force in India or any co-operative society, with which or to which the State Bank has entered into or made or

proposes to enter into or make, a contract, loan, arrangement or proposal; or

(ii) if a direct ex-officio of the State Bank or a director of a subsidiary bank.

(4) If for any reason neither the president nor the vice-president is able to be present at a meeting of the Local Board, any member, other than the secretary and treasurer, elected by the members present from amongst themselves, shall preside at the meeting.

(5) Notwithstanding anything contained in this section, the chairman shall preside at any meeting of a Local Board at which he is present and in the absence of the chairman, the vice-chairman, if he is a member of the Local Board, shall, whenever he is present, preside at such meeting.

[*] Inserted by Act 35 of 1964, S. 10 (1-12-1964).

CHAPTER VI

BUSINESS OF THE STATE BANK

32. State Bank to act as agent of the Reserve Bank.— (1) The State Bank shall, if so required by the Reserve Bank, act as agent of the Reserve Bank at all places in India where it has a branch, *[or where there is a branch of a subsidiary bank] and where there is no branch of the banking department of the Reserve Bank, for—

(a) paying, receiving, collecting and remitting money, bullion and securities on behalf of any Government in India; and

(b) undertaking and transacting any other business which the Reserve Bank may from time to time entrust to it.

(2) The terms and conditions on which any such agency business shall be carried on by the State Bank on behalf of the Reserve Bank shall be such as may be agreed upon.

(3) If no agreement can be reached on any matter referred to in sub-section (2) or if a dispute arises between the State Bank and the Reserve Bank as to the interpretation of any agreement between them, the matter shall be referred to the Central Government and the decision of the Central Government thereon shall be final.

(4) The State Bank may transact any business or perform any functions entrusted to it under sub-section (1) †[by itself or through a subsidiary bank] or through an agent approved by the Reserve Bank.

[*] Inserted by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), S. 64 and Sch. III, Pt. VI (10-9-1959).

[†] Substituted for "either by itself", ibid.

33. Other business which the State Bank may transact.— Subject to the other provisions contained in this Act, the State Bank may carry on and transact any of the following kinds of business, namely:—

(i) the advancing and lending of money and the opening of cash credits upon the security of—

(a) stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India or in any other country in which the State Bank has a branch;

(b) debentures or other securities for money issued by or on behalf of a district board, municipal board, committee or other local authority under the authority of any Central Act, Provincial Act or State Act or of any law for the time being in force in any other country in which the State Bank has a branch;

(c) subject to such directions as may be issued by the Central Board, debentures of companies with limited liability registered either in India or in such other country as the Central Government may approve in this behalf;

(d) subject to such directions as may be issued by the Central Board, shares and debentures of corporations established *[by or under any law for the time being in force in India other than companies with limited liability];

(e) goods which, or the documents of title to which, are deposited with or assigned to the State Bank as security for such advances, loans or credits;

(f) †[goods or assets which are hypothecated or assigned] to the State Bank as security for such advances, loans on credits, if so authorised by special directions of the Central Board;

‡[(ff) subject to such directions as may be issued by the Central Board, book-debts or other assets of any undertaking engaged in the financing of hire-purchase transactions which are hypothecated to the State Bank as security for such advances, loans or credits.]

(g) accepted bills of exchange and promissory notes endorsed by payees, and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership;

(h) fully paid shares of companies with limited liability or immovable property or documents of title relating thereto as collateral security only where the original security is one of those specified in sub-clauses (a) to (e) and, subject to such directions as may be issued by the Central Board, where the original security is one of the kinds specified in §[sub-clauses (f), (ff) and (g)]:

Provided that where the Central Government or a State Government or any Government or authority outside India, which the Central Government may approve in this behalf, may accept from the State Bank any advances or loans under any law for the time being in force, the Central Board may, if it thinks fit, make such advances or loans without any specific security;

(ii) the selling and realisation of the proceeds of sale of any promissory notes, debentures, stock-receipts, bonds, annuities, stock, shares, securities or goods which, or the documents of title to which, have been deposited with, or pledged, hypothecated, assigned or transferred to the State Bank as security for such advances, loans or credits or which are held by the State Bank or over which the State Bank is entitled to any lien or charge in respect of any loan, advance, credit or claim of the State Bank, and which have not been redeemed in due time in accordance with the terms and conditions of such deposit, pledge, hypothecation, assignment or transfer;

(iii) the drawing, accepting, discounting, buying and selling of bills of exchange and other negotiable securities;

(iv) the investing of the funds of the State Bank upon any of the securities specified in sub-clauses (a) to (d) of clause (i) and the conversion of the same into money whenever required, and the alteration, conversion or transposition of any such investment for or into any of the other investments above specified;

°†[(iva) the keeping or maintenance of deposits or cash accounts with any banking institution;]

(v) the issuing of demand drafts, telegraphic transfers and other kinds of remittances made payable at its own offices, branches or agencies, the purchasing of drafs, telegraphic transfer and other remittances, and the making, issuing and circulating of letters of credit to order or otherwise than to the bearer on demand;

(vi) the buying and selling of gold and silver, whether coined or uncoined;

(vii) the receiving of deposits and keeping cash accounts on such terms as may be agreed upon;

(viii) the receiving of all kinds of bonds, scrips, title deeds or valuables on deposit or for safe custody or otherwise on such terms as may be agreed upon;

(ix) the selling and realising of all property, whether movable or immovable, which may in any way come into the possession of the State Bank in satisfaction or part satisfaction of any of its claims, and the acquisition and holding of, and generally the dealing with, any right, title or interest in any property, movable or immovable, which may be the State Bank's security for any loan or advance or may be connected with any such security;

(x) the acting as agent of any co-operative bank which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law for the time being in force in any part of India relating to co-operative societies in the transaction of such business, and on such terms as may be agreed upon;

°‡[(xa) the acting as agent for the Central Government or any State Government or any corporation in implementing any scheme for financing the construction of dwelling houses, and in advancing or lending of money from out of the funds placed at its disposal as such agent by the Government or corporation to any person upon such security (including the security of any immovable property) and on such terms and conditions and for such periods as may, notwithstanding anything contained in this Act, be approved by the Government or corporation by which such funds have been placed;]

(xi) the underwriting of the issues of any stocks, shares, debentures or other securities in which the State Bank, is authorised to invest its funds under clause (iv);

°§[(xii) the transacting of pecuniary agency business on commission;

(xiia) the entering into contracts of indemnity, suretyship or guarantee with specific security or otherwise;]

(xiii) the administration, whether alone or jointly with other persons, of estates for any purpose, whether as executor, trustee or otherwise, the acting, whether alone or jointly with other persons, as trustee under any settlement or debenture, trust deed, or as liquidator of any banking institution, or the acting as an agent on commission in the transaction of the following kinds of business, namely:—

(a) the buying, selling, transferring and taking charge of any securities or any shares in any public company;

(b) the receiving of the proceeds (whether principal, interest or dividends) of any securities or shares;

(c) the remittance of such proceeds by bills of exchange, payable either in India or elsewhere;

(xiv) the drawing of bills of exchange and the granting of letters of credit payable out of India;

(xv) the buying of bills of exchange payable out of India at any usance not exceeding fifteen months in the case of bills relating to the financing of seasonal agricultural operations or six months in other cases;

(xvi) the borrowing of money for the purposes of the business of the State Bank, and the giving of security for money so borrowed by pledging assets or otherwise;

(xvii) the advancing or lending of money to, or the opening of cash credit in favour of, any company having a share capital which is expressed in rupees in its memorandum of association or any society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in India relating to co-operative societies, for the purpose of averting the winding up of the company or society or, where any such company or society is being wound up, for the purpose of facilitating such winding up, for any period upon the security of all or any of the assets whatsoever of such company or society

and such advance, loan or cash credit may be made by the State Bank either alone or conjointly with other persons;

(xviii) the advancing and lending of money to Courts of wards upon the security of estates in their charge or under their superintendence and the realisation of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the State Government concerned, and that the period for which any such advance or loan is made shall not exceed fifteen months in the case of advances or loans relating to the financing of seasonal agricultural operations and six months in other cases;

(xix) with the approval of the Reserve Bank, the subscribing to, buying, acquiring or holding, and the selling of any shares in or the capital of any banking institution †‡[the forming or conducting of any such banking institution as a subsidiary of the State Bank or in any other manner and the granting of subsidies or the advancing or lending of moneys to any such subsidiary];

†§[(xixa) in consultation with the Reserve Bank and subject to the directions of the Central Board, the subscribing to, buying, acquiring, holding or selling of any shares or debentures of any such financial institution*†§ as may be notified by the Central Government in this behalf;

‡§[(xixaa) contributing to the initial capital of the Unit Trust of India established under the Unit Trust of India Act, 1963;]

(xixb) †[the advancing or lending of money to, or discounting or purchase of any negotiable instrument on behalf of] persons engaged in such industries or classes of industries ‡‡[or in such business or trade or classes of business or trade] as may be specified by the Central Board by directions issued in this behalf, for any period †[in excess of twelve months but not exceeding fifteen years] and subject thereto and to such directions as may be issued by the Central Board, such advance or loan may be made on such terms and conditions and upon such security (including the security of any immovable property) as the State Bank may deem fit;

(xixc) the advancing or lending of money to any co-operative housing society, all the members of which are officers or employees of the State Bank, and subject to such directions as may be issued by the Central Board, such advance or loan may be made for such periods in excess of †[twelve months], on such terms and conditions and upon such security (including the security of any immovable property) as the State Bank may deem fit;]

(xx) the subsidising from time to time of the pension funds referred to in section 8, if necessary;

*†‡[(xxa) notwithstanding anything to the contrary contained in any other law for the time being in force, the establishment and maintenance of superannuation pension, provident or other funds for the benefit of the employees of the State Bank or dependents of such employees or for the purposes of the State Bank, and the granting of superannuation allowances, annuities and pensions payable out of any such fund;]

(xxi) the doing of any other kind of business which the Central Government, in consultation with the Reserve Bank and on the recommendation of the Central Board, may authorise;

(xxii) the performance of the functions entrusted to, or required of, the State Bank by this Act or by any other law for the time being in force; and

(xxiii) generally, the doing of all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business, including foreign exchange business, herein specified.

[°] Substituted for the words "under any law for the time being in force in India" by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), S. 4 (28-8-1959).

[†] Inserted or substituted by Banking Laws (Am.) Act, 1968 (58 of 1968), S. 29 (1-2-1969).

[‡] Inserted, ibid, 1957 (XXI of 1957), S. 4 (8-6-1957).

[§] Substituted for the words "sub-clauses (f) and (g)", ibid.

[*†] Inserted by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), S. 64 and Sch. III, Part VI (10-9-1959).

[*‡] Inserted by Act XXI of 1957, S. 4 (8-6-1957).

[*§] Substituted for clause (xii), by Act XXVI of 1959, S. 4 (28-8-1959).

[†‡] Substituted for the words "and the forming or conducting of any such banking institution as a subsidiary of the State Bank or in any other manner" by Act XXXVIII of 1959, S. 64 and Sch. III, Part VI (10-9-1959).

[†§] Inserted by Act XXI of 1957, S. 4 (8-6-1957).

[‡§] Inserted by the Unit Trust of India Act, 1963 (52 of 1963), S. 34 and Sch., Pt. IV (1-2-1964).

[°†‡] Inserted by Act XXVI of 1959, S. 4 (28-8-1959).

[‡‡] Inserted by Act 35 of 1962, S. 7 (15-9-1962).

[°†§] Credit Guarantee Corporation of India, Ltd. notified as a financial institution for the purposes of this clause—See Gaz. Ind., 1971, Pt. II, S. 2, Ext., p. 2.

OBJECTS AND REASONS

Amendments made in 1957.— "Some of the restrictions in the State Bank of India Act relating to the grant of loans and advances for periods in excess of six months and against the primary security of immovable property are sought to be removed . . . . in order to enable the Bank to assist in providing adequate medium-term finance to industries in the context of the industrial development contemplated under the Second Five-Year Plan."—S.O.R., Gaz. of Ind., 1957, Extra., Pt. II-Sec. 2, page 180.

Amendment made in 1959: Clause (i) (d).— "Section 33 deals with the business which the bank is permitted to transact. Clause (i) (d) of the section as it stands is capable of being so interpreted as to permit the State Bank to make loans on the primary security of the shares of the ordinary joint stock companies. This is not, however, the intention, and the object of the amendment is to clarify the position."—S.O.R.; Gaz. Ind., 1959, Extra., Pt. II-Sec. 2, page 154.

Clause (xxa).— "Sub-section (1) of section 50 confers on the Central Board of the State Bank the power to make regulations for the conduct of the affairs of the bank after consultation with the Reserve Bank and with the previous sanction of the Central Government. Among the powers thus specified is a power to establish a pension fund for the benefit of employees who have entered the service of the bank after July 1, 1955 [the date of the commencement of the Act]. There is some inconsistency between this provision and the provision made in Section 30 of the Life Insurance Corporation Act, 1956, read with Section 44, ibid, and it is therefore, proposed to introduce a new clause (xxa) in Section 33 and to redraft Section 50 (2) (o), so as to make it clear that the new pension fund for fresh entrants to its service can be established by the bank."—ibid, page 155.

34. Business which the State Bank may not transact.— (1) The State Bank shall not make a loan or advance—

(a) for a longer period than °[twelve months] except as otherwise provided in this Act; or

(b) upon the security of stock or shares of the State Bank; or

(c) upon the security of any immovable property or the documents of the title relating thereto, except to the extent necessary for any of the purposes of this Act.

(2) The State Bank shall not, except upon a security of the kind specified in sub-clauses (a) to (e) of clause (i) of section 33 discount bills for any individual or firm for an amount exceeding in the whole at any one time such sum as

may be prescribed, or lend or advance in any way to any individual or firm an amount exceeding in the whole at any one time such sum as may be prescribed.

†[(3) The State Bank shall not discount or purchase or advance or lend or open cash creditis on the security of,—

(a) any negotiable instrument of any individual or firm payable at the place where it is presented which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership;

(b) any negotiable instrument or security (not being an instrument or security in which a trustee may invest trust money under Section 20 of the Indian Trusts Act, 1882, or the corresponding provision of the law for the time being in force in any country where the State Bank has a branch) which does not mature within—

(i) fifteen months from the date of such discount, purchase, loan, advance or opening of cash credits, if the instrument or security is drawn or issued for the purpose of financing seasonal agricultural operations; and

(ii) °[save as otherwise provided in this Act, twelve months from the date aforesaid if the instrument or security is drawn or issued for any other purpose:]

‡[Provided that nothing in sub-clause (ii) of clause (b) shall apply where the State Bank holds by way of a collateral security any negotiable instrument or security which does not mature within *[twelve] months from the date aforesaid in respect of a loan, advance or cash credit sanctioned.]

(4) * ° ° * ° ° °

(5) Nothing contained in this section shall prevent the State Bank from allowing any person who keeps an account with the State Bank to overdraw such account without security §[or without security of a description authorised by this Act] to such extent as may be prescribed.

(6) Save as otherwise provided in §[this Act], the State Bank shall not own or acquire any §[* ° °] immovable property except for the purpose of providing buildings or other accommodation in which to carry on the business of the State Bank or for providing residences for its officers and other employees:

Provided that if any such building or other accommodation is not immediately required for any of the purposes of the State Bank, the State Bank may utilize it to the best advantage by letting it out or in any other manner.

[°] Substituted for words "six months" and for former sub-clause (ii) of cl. (b) by the Banking Laws (Am.) Act, 1968 (58 of 1968), S. 30 (1-2-1969).

[†] Substituted for sub-sections (3) and (4), by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), S. 5 (28-8-1959).

[‡] Proviso inserted by the Reserve Bank of India (Amdt.) Act, 1962 (35 of 1962), S. 7 (15-9-1962).

[§] Inserted, substituted for 'section 33' and words 'interest in' omitted by the State Associated Banks (Miscellaneous Provisions) Act, 1962 (56 of 1962), S. 2 (ii) (14-12-1962).

35. State Bank may acquire the business of other banks.— (1) The State Bank may, with the sanction of the Central Government, and shall, if so directed by the Central Government in consultation with the Reserve Bank, enter into negotiations for acquiring the business, including the assets and liabilities, of any banking institution.

*[(2) The terms and conditions relating to such acquisition, if agreed upon by the Central Board of the State Bank and the directorate or management of the banking institution concerned and approved by the Reserve Bank, shall be submitted to the Central Government for its sanction and that Government may by order in writing (hereafter in this section referred to as the order of sanction) accord its sanction thereto.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force or any instrument regulating the constitution of the banking

institution concerned, the terms and conditions as sanctioned by the Central Government shall come into effect on the date specified by the Central Government in this behalf in the order of sanction and be binding upon the State Bank and the banking institution concerned as well as upon the share-holders (or, as the case may be, proprietors), and creditors of that banking institution.

(4) If for any reason the terms and conditions cannot come into effect on the date specified in the order of sanction, the Central Government may fix another suitable date for that purpose.

(5) On the date on which the terms and conditions as aforesaid come into effect the business and the assets and liabilities of the banking institution concerned as covered by the acquisition shall, by virtue, and in accordance with the provisions, of the order of sanction stand transferred to, and become respectively the business and the assets and liabilities of, the State Bank.

(6) The consideration for the acquisition of the business and the assets and liabilities of any banking institution under this section may, if so agreed upon, be paid either in cash or by allotment of shares in the capital of the State Bank or partly in cash and partly by allotment of shares, and the State Bank may for the purpose of any such allotment, increase, subject to the other provisions contained in this Act relating to the increase of capital, the capital of the State Bank by the issue of such number of shares as may be determined by the State Bank.

(7) Any business acquired under this section shall thereafter be carried on by the State Bank in accordance with the provisions of this Act, subject to such exemptions or modifications as the Central Government may by notification in the Official Gazette, make in this behalf in consultation with the Reserve Bank:

Provided that no such exemption or modification shall be made so as to have effect for a period of more than seven years from the date of acquisition.

(8) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law or in any agreement for the time being in force, on the acquisition of the business and the assets and liabilities of any banking institution under this section, no officer or other employee of that banking institution shall be entitled to any compensation to which he may be entitled under that Act or that other law or that agreement and no claim in respect of such compensation shall be entertained by any Court, tribunal or other authority, if on his having accepted in writing an offer of employment by the State Bank on the terms and conditions proposed by it he has been employed in accordance with such terms and conditions.

(9) The Central Government may, if it considers necessary or expedient in the case of any banking institution in relation to which an order of sanction has been made under this section, appoint, whether before or after the coming into effect of the terms and conditions relating to the acquisition of the business and the assets and liabilities of that banking institution, a suitable person to take over the management of that banking institution for the purposes of winding up its affairs and distributing its assets, and the expenditure incurred in connection with such management (including the remuneration for the person so appointed and his staff, if any) shall be paid out of the assets of the banking institution or by the State Bank as the Central Government may direct.

(10) Simultaneously with the appointment of a suitable person to take over the management of any banking institution under sub-section (9) or immediately thereafter, the Central Government shall issue directions to be followed by that person in the management of that banking institution for the purposes aforesaid and thereupon—

(a) the provisions of the Companies Act, 1956, or the Banking Companies Act, 1949, or any other law for the time being in force or any instrument having effect by virtue of any such Act or law, in so far as they are inconsistent with such directions, shall cease to apply to or in relation to that banking institution;

(b) all persons in charge of the management, including any person holding office as manager or director of the banking institution immediately

before the issue of such directions, shall be deemed to have vacated their offices as such; and

(c) the person appointed to take over the management of the banking institution shall in accordance with those directions take all such steps as may be necessary to facilitate the winding up of its affairs and distribution of its assets.

(11) The Central Government, when satisfied that nothing further remains to be done in order to wind up the affairs of any such banking institution, may by another order in writing direct that as from such date as may be specified therein the banking institution shall stand dissolved and thereupon any such direction shall have effect notwithstanding anything to the contrary contained in any other law.

(12) No action under this section shall be questioned on the ground merely of any defect in the constitution of any banking institution in relation to which such action has been taken or in the constitution of its Board of Directors or in the appointment of any person entrusted with the management of its affairs.

(13) In this section "banking institution" includes any individual or any association of individuals (whether incorporated or not, or whether a department of Government or a separate institution), carrying on the business of banking.]

[*] Sub-sections (2) to (13) were substituted for sub-sections (2), (3) and (4) by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), S. 6 (28-8-1959).

OBJECTS AND REASONS

Amendment made in 1959: sub-ss. (2) to (13).— "Section 35 of the State Bank of India Act provides for the acquisition by the State Bank through negotiation of the business of any existing bank. It has, however, been found from actual experience that the procedure for the acquisition which is now prescribed is elaborate and time-consuming, and it is proposed accordingly to redraft the section, so as to simplify the procedure. The amendments provide,—

(a) that if the scheme for the transfer of the assets and liabilities to the State Bank is approved by the boards of directors of the two institutions, such a decision will prevail in spite of any statutory or other provision to the contrary;

(b) that the formal transfer can be made effective through an order of the Central Government, without the necessity of executing elaborate legal documents;

(c) that the residuary institution, after the transfer of its assets and liabilities to the State Bank may, if necessary, be wound up, according to a simpler procedure than is now prescribed;

(d) that the provisions of Sections 25-F and 25-FF of the Industrial Disputes Act, 1947, in regard to retrenchment compensation, which are intended to be applicable in a case in which there is a substantial break in the continuity of employment or a reduction in emoluments or other benefits, will not be applied, in the case of employees whose services are transferred with their consent to the State Bank, on the merger of the institution in which they were previously employed."—S.O.R.; Gaz. Ind., 1959, Extra., Pt. II-Sec. 2, p. 154.

Sub-section (12).— The amendment made in sub-s. (12) by the Joint Committee makes "it clear that the sub-clause would cover a defect in the constitution of the Board of Directors or in the appointment of any person entrusted with the management of the banking institution."—J. C. R. ; ibid, p. 702.

CHAPTER VII

FUNDS, ACCOUNTS AND AUDIT

36. Integration and Development Fund.— (1) The State Bank shall maintain a special fund to be known as the Integration and Development Fund into which shall be paid—

(a) the dividends payable to the Reserve Bank on such shares of the State Bank held by it as do not exceed fifty-five per cent. of the total issued capital; and

(b) such contributions as the Reserve Bank or the Central Government may make from time to time.

*[Provided that if the balance in the Integration and Development Fund on the date of declaration of any dividends by the State Bank is rupees five crores or more, no amount shall be paid into that Fund under clause (a) and the dividends payable to the Reserve Bank shall be paid to that Bank; and if such balance on such date is less than rupees five crores, only so much of the dividends then payable as will bring such balance to rupees five crores shall be paid into that Fund and the balance of such dividends shall be paid to the Reserve Bank.]

(2) The amount in the said Fund shall be applied exclusively for meeting—

(a) losses in excess of such yearly sum as may be agreed upon between the Reserve Bank and the State Bank and attributable to the branches established in pursuance of sub-section (5) of section 16;†[*].

‡[(aa) subsidies granted by the State Bank to a subsidiary bank with the approval of the Reserve Bank; and]

(b) such other losses or expenditure as may be approved by the Central Government in consultation with the Reserve Bank.

(3) Subject to the provisions of sub-section (2), the said Fund shall be the property of the Reserve Bank and no shareholder or the State Bank or any other person shall have any claim to the amount held in the said Fund.

§[(4) No amount applied for any of the purposes specified in sub-section (2) shall, for the purposes of the Indian Income-tax Act, 1922, be treated as income, profits or gains of the State Bank.]

[*] Inserted by the State Bank of India (Amendment) Act, 1964 (35 of 1964), S. 12 (1-12-1964).

[†] The word "and" was omitted by the State Bank of India (Subsidiary Banks) Act, 1959 (XXXVIII of 1959), S. 64 and Sch. III, Pt. VI (10-9-1959).

[‡] Inserted Ibid.

[§] Inserted by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), S. 7 (28-8-1959).

37. Reserve Fund.— The State Bank shall establish a Reserve Fund which shall consist of—

(a) the amount held in the Reserve Fund of the Imperial Bank transferred to the State Bank on the appointed day; and

(b) such further sums as may be transferred to it by the State Bank out of its annual net profits before declaring a dividend.

38. Disposal of profits.— (1) After making provision for bad and doubtful debts, depreciation in assets, equalisation of dividends, contribution to staff and superannuation funds and for all other matters for which provision is necessary by or under this Act or which are usually provided for by banking companies, the State Bank may, out of its net profits, declare a dividend.

(2) Subject to the provisions of paragraph 6 of the First Schedule, the rate of dividend shall be determined by the Central Board.

39. Books to be balanced each year.— The Central Board shall cause the books of the State Bank to be closed, and balanced on the 31st day of December in each year.

40. Returns.— (1) The State Bank shall furnish to the Central Government and to the Reserve Bank within two months from the date on which its accounts are closed and balanced its balance sheet, together with the profit and loss account and the auditors' report on the working of the State Bank during the period covered by the accounts.

Section 38 — Note 1

(1) State Bank of India is a public authority with public duties and not a commercial corporation. The disposal of profits as provided by Section 38 is not the primary object as of the establishment of the State Bank but it is incidental to the nature of the business transacted by the Bank. AIR 1964 Mad 335 (344) = (1963) 2 Lab LJ 304.

(2) The balance sheet and the profit and loss account shall be signed by the chairman, vice-chairman, managing directors, if any, and a majority of the other directors.

(3) The State Bank shall also, within two months from the date on which its accounts are closed and balanced, transmit to the Central Government and the Reserve Bank a statement showing as far as may be available, the name, address and occupation of, and the number of shares held by, each shareholder of the State Bank as on the said date.

41. Audit.—(1) The affairs of the State Bank shall be audited by two auditors duly qualified to act as auditors of companies under *[section 226 of the Companies Act 1956] who shall be appointed by the Reserve Bank in consultation with the Central Government.

(2) The auditors shall receive such remuneration as the Reserve Bank may fix in consultation with the Central Government.

(3) An auditor may be a shareholder but no director or member of a Local Board or of a Local Committee or an officer of the State Bank shall be eligible to be an auditor during his continuance in office as such director, member or officer.

(4) An auditor shall on relinquishing office be eligible for reappointment.

(5) The auditors shall severally be, and continue to act as, auditors until the †[annual] general meeting after their respective appointment, and if any vacancy arises before the expiry of the term of office of an auditor, the vacancy may be filled by the Reserve Bank.

(6) Every auditor shall be supplied with a copy of the annual balance sheet and profit and loss account, and a list of all books kept by the State Bank, and it shall be the duty of the auditor to examine the balance sheet and profit and loss account with the accounts and vouchers relating thereto, and in the performance of his duties, the auditor—

(a) shall have, at all reasonable times, access to the books, accounts and other documents of the State Bank;

(b) may, at the expense of the State Bank, or if he is appointed by the Central Government, at the expense of the Central Government, employ accountants or other persons to assist him in investigating such accounts; and

(c) may, in relation to such accounts, examine any director or any member of a Local Board or of a Local Committee or any officer of the State Bank.

(7) The auditors shall make a report to the Central Government upon the annual balance sheet and accounts, and in every such report they shall state—

(a) whether, in their opinion, the balance sheet is a full and fair balance sheet containing all the necessary particulars and properly drawn up so as to exhibit ‡[a true and fair view] of the affairs of the State Bank, and in case they have called for any explanation or information, whether it has been given and whether it is satisfactory;

(b) whether or not the transactions of the State Bank which have come to their notice have been within the powers of the State Bank;

(c) whether or not the returns received from the offices and branches of the State Bank have been found adequate for the purpose of their audit;

(d) whether the profit and loss account shows a true balance of §[profit or loss] for the period covered by such account; and

(e) any other matter which they consider should be brought to the notice of the shareholders or the Central Government, as the case may be.

(8) The auditors shall also forward a copy of the audit report to the State Bank.

(9) Without prejudice to anything contained in the foregoing provisions, the Central Government may appoint at any time such auditors as it thinks fit to examine and report on the accounts of the State Bank.

[*] Substituted for "sub-section (1) of section 144 of the Indian Companies Act, 1913" by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), Section 8 (28-8-1959).

[†] Substituted for "first", ibid.

[‡] Substituted for "a true and correct view" by the State Bank of India (Amendment) Act, 1964 (25 of 1964), Section 13 (1-12-1964).

[§] Substituted for "profit and loss", ibid.

42. Balance sheet, etc., of State Bank may be discussed at general meeting.—(1) A general meeting (*[in this Act] referred to as an annual general meeting) shall be held at such time and at such place where there is a local head office of the State Bank, as shall from time to time be specified by the Central Board before the end of †[March] in each year, and a general meeting may be convened by the State Bank at any other time:

Provided that the first annual general meeting shall be held at Bombay.

(2) The shareholders present at an annual general meeting shall be entitled to discuss the balance sheet and the profit and loss account of the State Bank made upto the previous 31st day of December, the report of the Central Board on the working of the State Bank for the period covered by the accounts and the auditor's report on the balance sheet and accounts.

[*] Substituted for the word "hereinafter" by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), Section 9 (28-8-1959).

[†] Substituted for "February", ibid, 1957 (XXI of 1957), Section 5 (8-6-1957).

CHAPTER VIII
MISCELLANEOUS

43. State Bank may appoint officers and other employees.—°[(1)] The State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service.

°[(2) The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board.]

[°] Original Section 43 renumberd as sub-section (1) thereof and sub-section (2) inserted thereafter by the State Bank of India (Amendment) Act, 1964 (35 of 1964), Section 14 (1-12-1964).

44. Obligation as to fidelity and secrecy.—(1) The State Bank shall observe, except as otherwise required by law, the practices and usages customary among bankers and in particular, it shall not divulge any information relating to or to the affairs of its constituents except in circumstances in which it is, in accordance with the law or practice and usage customary among bankers, necessary or appropriate for the State Bank to divulge such information.

(2) Every director, member of a Local Board or of a Local Committee, auditor, adviser, officer or other employee of the State Bank shall, before entering upon his duties, make a declaration of fidelity and secrecy as in the form set out in the Second Schedule.

45. Bar to liquidation of State Bank.—No provision of law relating to the winding up of companies shall apply to the State Bank, and the State Bank shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct.

46. Indemnity of directors and members of Local Boards and Local Committees, etc.—(1) Every director and every member of Local Board or a Local Committee shall be indemnified by the State Bank against all losses and expenses incurred by him in or in relation to the discharge of his duties except such as are caused by his own wilful act or default.

Section 43 — Note 1

(1) The State Bank authorities are not required to proceed judicially in the matter of dismissing their employees and the power conferred by Section 43 being an absolute power no quasi-judicial obligation can be inferred from it. Consequently, rules of natural justice are not available to the employee who has been dismissed. AIR 1968 Cal 59 (62) = 14 Fac LR 140 = 1968 Lab IC 127.

(2) Neither a director nor a member of a Local Board or a Local Committee shall be responsible for any loss or expense caused to the State Bank by the insufficiency or deficiency of the value of or title to any property or security acquired or taken on behalf of the State Bank or by the insolvency or wrongful act of any customer or debtor or by anything done in or in relation to the execution of the duties of his office or otherwise than for his wilful act or default.

47. Defects in appointment or constitution not to invalidate acts or proceedings.—(1) No act or proceeding of the Central Board or of a Local Board or a Local Committee shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Board or Committee, as the case may be.

(2) All acts done by any person acting in good faith as a director or as a member of a Local Board or of a Local Committee shall, notwithstanding that there was some defect in his appointment or qualifications, be as valid as if he was a director of the Central Board or a member of the Local Board or the Local Committee, as the case may be.

48. Power to remove difficulties.—[Omitted by Act XXXV of 1964, Section 15 (1-12-1964).]

49. Power of Central Government to make rules.—(1) The Central Government, in consultation with the Reserve Bank, may, by notification in the Official Gaztte, make rules* to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the procedure for the payment of compensation under this Act;

(b) the determination of persons to whom the said compensation shall be payable in all cases, including cases where shares in the Imperial Bank have been held by more than one person, or where they have been transferred before the appointed day but the transfer has not been registered or where the shareholder is dead.

[*] For the State Bank (Compensation on Imperial Bank Shares) Rules, 1955, see Gaz. of Ind., Extra., Part II, Section 3, page 1409.

50. Power of Central Board to make regulations.—(1) The Central Board may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, make regulations, not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the nature of shares of the State Bank, the manner in which and the conditions subject to which shares may be held and transferred and generally all matters relating to the rights and duties of shareholders;

(b) the maintenance of share registers, and the particulars to be entered in the principal register in addition to those specified in section 13, the areas to be served by each branch register, the inspection and closure of the registers and all other matters connected therewith;

(c) the holding and conduct of elections under this Act, including the allocation of elected directors to the various areas served by the different branch registers, and the final determination of doubts or disputes regarding the qualifications of candidates for election or regarding the validity of elections;

°[(d) the powers, functions and duties of Local Boards and the restrictions, conditions or limitations, if any, subject to which they may be exer-

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Section 50 — Note 1

(1) Under Regulations 55 and 56 of the State Bank of India General Regulations framed under Section 50, the employee of the Bank could be dismissed either by the Central Board or by the Local Board or any Committee thereof. Dismissal by Staff Superintendent was ultra vires. AIR 1968 Cal 59 (64) = 14 Fac LR 140 = 1968 Lab IC 127.

cised or performed, the formation and constitution of Local Committees (including the number of members of any such Committee) and of committees of Local Boards, the powers, functions and duties of such Committees, the holding of meetings of Local Committees and committees of Local Boards and the conduct of business thereat;]

(e) the fees and allowances which may be paid to directors, or members of Local Boards or Local Committees for attending any meetings of the Central Board or of its committees or of the Local Boards or Local Committees, as the case may be, or for attending to any other work of the State Bank;

(f) the manner in which the business of the Central Board *[or of Local Board] shall be transacted and the procedure to be followed at the meetings thereof;

(g) the formation of committees of the Central Board and the delegation of powers and functions of the Central Board to such committees and the conduct of business in such committees;

*[(h) * * * * *]

(i) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(j) the holding of meetings of shareholders on branch registers and the business to be transacted thereat;

(k) the manner in which notices may be served on behalf of the State Bank upon shareholders or other persons;

(l) the provision of seals for the State Bank and the manner and effect of their use;

(m) the conduct and defence of legal proceedings and the manner of signing pleadings;

(n) the duties and conduct of officers, other employees, advisers and agents of the State Bank;

†[(o) the establishment and maintenance of superannuation pension, provident or other funds for the benefit of the employees of the State Bank or of the dependants of such employees or for the purposes of the State Bank, and the granting of superannuation allowances, annuities and pensions payable out of any such fund;]

(p) the form and manner in which contracts binding on the State Bank may be executed;

(q) the maximum amounts which may be advanced or lent to, or for which bills may be discounted for, any individual or partnership without security ‡[or without security of a description authorised by this Act] the conditions under which advances may be made on security and the extent to which accounts may be overdrawn without security;

(r) the conditions subject to which alone, advances may be made to directors, members of Local Boards or of Local Committees or officers of the State Bank, or the relatives of such directors, members or officers or to companies, firms or individuals with which or with whom such directors, members, officers, or relatives, are connected as partners, directors, managers, servants, shareholders or otherwise;

(s) the statements, returns, and forms that are required for the purposes of this Act;

(t) the payment of dividends, including interim dividends;

(u) generally for the conduct of the business of the State Bank.

(3) Notwithstanding anything contained in this section, the first regulations§ shall be made by the Reserve Bank with the previous sanction of the Central Government, and thereupon shall be deemed to be the regulations made by the Central Board under this section and shall have force accordingly until they are amended or repealed.

[*] Substituted for former clause (d) inserted and omitted by the State Bank of India (Amendment) Act, 1964 (35 of 1964), Section 16 (1-12-1964).

[†] Substituted for clause (o) by the State Bank of India (Amendment) Act, 1959 (XXVI of 1959), Section 10 (28-8-1959).

[‡] Inserted by Act LVI of 1962, Section 2 (iii) (15-12-1964).

[§] For State Bank of India General Regulations, 1955, see Gaz. of Ind., 21-6-55, Ext., page 357.

°[**51. Requirements of foreign law to be complied with in certain cases.**—If, according to the laws of any country outside India, the provisions of this Act by themselves are not effective to transfer to and vest in the State Bank any asset or liability which forms part of the undertaking of the Imperial Bank and which is situate in that country, the Imperial Bank shall take all such steps as may be required by the laws of that country for the purpose of effecting or perfecting such transfer and vesting, and in connection therewith the Imperial Bank may realise any asset and discharge any liability and transfer the net proceeds thereof to the State Bank.]

[*] Substituted and deemed always to have been substituted, for original Section 51 by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 5 and 8.

52. Amendment of Act II of 1934.—[Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

53. Amendment of Act X of 1949.—[Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

54. Amendment of Act XLVII of 1920.—[Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

*[**55. No proceeding to lie in India against Imperial Bank after appointed day.**—On and from the appointed day,† no person shall make any claim or demand or take any proceeding in India against the Imperial Bank or a director, officer or other employee thereof in his capacity as such director, officer or employee except in so far as may be necessary for enforcing the provisions of this Act or except in so far as it relates to any offence committed by any such director, officer or employee.]

[*] Inserted and deemed always to have been inserted, by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 6 and 8.

[†] That is, 1st July, 1955.

*[**56. References to the Imperial Bank, the Bank of Bengal, etc., in other laws.**—On and from the appointed day,† any reference to the Imperial Bank or to the Bank of Bengal, the Bank of Madras or the Bank of Bombay in any law (other than this Act or the Imperial Bank of India Act, 1920) or in any contract or other instrument shall, except as otherwise provided in any general or special order made by the Central Government, be deemed to be a reference to the State Bank.]

[*] Inserted and deemed always to have been inserted, by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 6 and 8.

[†] That is, 1st July, 1955.

°[**57. Dissolution of Imperial Bank, etc.**—(1) On such day as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Imperial Bank shall stand dissolved, and the Imperial Bank of India Act, 1920, shall stand repealed.

(2) On the day specified in the notification under sub-section (1), the State Bank shall pay to the Reserve Bank a sum of ten lakhs of rupees.

(3) If, on the day specified in the notification under sub-section (1), the Imperial Bank has in its possession or custody any assets created on or after the appointed day, such assets shall be disposed of in accordance with the directions issued by the Central Government in this behalf.]

[°] Inserted and deemed always to have been inserted, by the State Bank of India (Amendment) Act, 1955 (XXXIII of 1955), Sections 6 and 8.

THE FIRST SCHEDULE

(See section 9)

COMPENSATION FOR THE TRANSFER OF SHARES OF THE IMPERIAL BANK TO THE RESERVE BANK

1. In this Schedule, "shareholder" means any person who immediately before the appointed day is registered as the holder of a share in the Imperial Bank.

2. As compensation for the shares in the capital of the Imperial Bank which, by reason of this Act, are transferred to and vested in the Reserve Bank, the Reserve Bank shall pay to every shareholder, in the manner set out hereinafter, an amount calculated at the rate of one thousand seven hundred and sixty-five rupees and ten annas per share in the case of a fully paid-up share and four hundred and thirty-one rupees twelve annas and four pies per share in the case of a partly paid-up share.

3. Notwithstanding the transfer of the shares in the capital of the Imperial Bank to the Reserve Bank, any shareholder who immediately before the appointed day is entitled to payment of dividend on the shares of the Imperial Bank held by him shall be entitled to receive from the State Bank—

(a) all dividends accruing due on his shares in respect of any half-year which ended before the appointed day and remaining unpaid;

(b) dividends calculated at a rate to be specified by the Central Government in respect of any period immediately preceding the appointed day for which the Imperial Bank has not declared any dividend.

4. (1) The compensation provided for in this Schedule shall be given in Central Government securities, and the form of such securities and the value thereof, computed with reference to their market value, shall be such as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that, where the amount of such compensation is not an exact multiple of the value of the Government security as so notified, the amount in excess of the nearest lower multiple of such value shall be paid by cheque drawn on the Reserve Bank.

(2) Notwithstanding anything contained in sub-paragraph (1), any person who is registered as the holder of a share in the Imperial Bank on the 19th day of Dec. 1954, and continues to be so until the appointed day shall, if he applies in writing in this behalf to the Reserve Bank before the expiry of three months from the appointed day, be entitled to be paid, by cheque drawn on the Reserve Bank, any compensation payable to him upto the first ten thousand rupees.

5. (1) Any shareholder to whom compensation is payable under this Schedule may apply to the Reserve Bank before the expiry of three months from the appointed day for the transfer to him of shares in the State Bank in lieu of such compensation, and for the purposes of such transfer the value of each share of the State Bank shall be such as may be determined by the Reserve Bank in this behalf.

(2) If on receipt of an application under sub-paragraph (1), the Reserve Bank, in its discretion, decides to transfer any shares to the applicant, it shall issue to the State Bank a warrant in the prescribed form directing it to transfer in favour of the person specified in the warrant such number of shares as may be specified therein out of the shares standing allotted to it under sub-section (1) of section 5, and the State Bank shall be bound to comply with such warrant.

(3) A warrant issued by the Reserve Bank under this paragraph shall not be liable to duty under the Indian Stamp Act, 1899.

6. (1) Reserve Bank may, if it decides to transfer, in pursuance of paragraph 5, more than two lakhs fifty-three thousand and one hundred and twenty-five shares, require the State Bank to issue to it such further shares as may be necessary to secure that it holds not less than fifty-five per cent. of the issued capital of the State Bank, and the State Bank shall, without prejudice to the provisions

contained in sub-section (3) of section 5, comply with such requirement on the Reserve Bank subscribing one hundred rupees for each share.

No share issued to the Reserve Bank at par under this paragraph shall carry dividend at a rate higher than four per cent. per annum.

THE SECOND SCHEDULE

(See section 44)

DECLARATION OF FIDELITY AND SECRECY

I, ..., do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as director, member of Local Board, member of Local Committee, auditor, adviser, officer or other employee (as the case may be) of the State Bank and which properly relate to the office or position in the said State Bank held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the State Bank or to the affairs of any person having any dealing with the State Bank; nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the State Bank and relating to the the business of the State Bank or to the business of any person having any dealing with the State Bank.

THE THIRD SCHEDULE

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

[Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

THE FOURTH SCHEDULE

AMENDMENTS TO THE BANKING COMPANIES ACT, 1949

[Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

THE FIFTH SCHEDULE

AMENDMENTS TO THE IMPERIAL BANK OF INDIA ACT, 1920

[Repealed by the Repealing and Amending Act, 1960 (LVIII of 1960), Section 2 and Schedule I (26-12-1960).]

[THE] STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959

(ACT XXXVIII OF 1959)

[The text of the Act printed here is as on 30-8-1973.]

CONTENTS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title.
2. Definitions.

CHAPTER II

CONSTITUTION OF NEW BANKS AND CHANGE OF NAME OF ANY SUBSIDIARY BANK

3. Establishment of new banks.
3A. Change of name of a subsidiary bank.
4. New banks to be bodies corporate.
5. Head office and branches of new banks.
6. Authorised capital of new banks.
7. Issued capital of new banks.
8. Reserve fund of the new banks.
9. Transfer of shares of existing banks to State Bank.
10. Transfer of undertaking of existing banks to new banks.
11. Transfer of services of employees of existing banks.
12. Special provision for transfer of foreign assets.

CHAPTER III

COMPENSATION

13. Compensation to shareholders of existing banks other than the Bank of Patiala.
14. Compensation payable by the State Bank in respect of the Bank of Patiala, the Saurashtra Bank and the Hyderabad Bank.
15. Constitution of the Tribunal.

SECTIONS
16. Tribunal to have powers of a Civil Court.
17. Procedure of the Tribunal.

CHAPTER IV
SHARES OF THE SUBSIDIARY BANKS
18. Transferability of shares.
19. Restriction on individual holdings.
20. Shares to be approved securities.
21. Register of shareholders.
22. Trusts not to be entered on the register.

CHAPTER V
MANAGEMENT OF SUBSIDIARY BANKS
23. Certain officers to vacate office.
24. Management.
25. Composition of the Board of Directors.
26. Term of office of directors.
27. Disqualification for directorship.
28. Vacation of office of directors.
29. General Manager.
30. Remuneration of directors.
31. Removal from office of director.
32. Appointment of another person for discharging the duties of general manager during his absence.
33. Casual vacancies among directors.
34. Meetings of the Board of Directors.
35. Executive committee and other committees.

CHAPTER VI
BUSINESS OF SUBSIDIARY BANKS
36. Subsidiary bank to act as agent of the State Bank.
37. Other business which a subsidiary bank may transact.
38. Acquisition of business of other banks.

CHAPTER VII
ACCOUNTS AND AUDIT.
39. Closing of Annual Accounts.
40. Disposal of profits.
41. Audit.
42. Temporary provision regarding existing auditors.
43. Returns to be furnished by a Subsidiary Bank.
44. General meetings.

CHAPTER VIII
MISCELLANEOUS
45. Power to issue directions for removing difficulties.
46. Observers for existing banks and the Saurashtra Bank.
47. Inspection.
48. Cost of development programme.
49. Special provision regarding existing officers and employees.
50. Staff of a subsidiary bank.
51. Establishment of pension and superannuation funds by subsidiary banks.
52. Obligation as to fidelity and secrecy.
53. Indemnity of directors.
54. Defects in appointment or constitution not to invalidate acts or proceedings.
55. Companies Act, 1956. and Banking Companies Act, 1949, not to apply to certain existing banks.
56. Continuance of special provisions respecting recovery of loans and advances made by the Bank of Patiala and the State Bank of Saurashtra.
57. Bar to liquidation of a subsidiary bank.
58. Dissolution of existing banks.
59. Reference in other laws to existing banks.
60. Exercise of powers and functions on behalf of the Reserve Bank.
61. Protection of action taken under Act.
62. Power of Central Government to make rules.
63. Power of the State Bank to make regulations.
64. Repealed.
65. Saving.

THE FIRST SCHEDULE.
Principles of Compensation.
THE SECOND SCHEDULE.
Declaration of Fidelity and Security.
THE THIRD SCHEDULE.
Amendments to certain enactments.

STATEMENT OF OBJECTS AND REASONS

"The future of certain major State-associated banks which are owned in part by the State Governments or with which such Governments have been closely associated has been under consideration for some time. The question has recently been comprehensively re-examined, with particular reference to the necessity for making adequate and proper provision for the management of treasuries and sub-treasuries in the areas served by these banks and the need for the expansion of these banks in these areas; and the views of the banks themselves have been ascertained.

2. The managements and shareholders of the Bank of Bikaner, the Bank of Indore, the Bank of Jaipur, the Bank of Mysore and the Travancore Bank have agreed to the proposal to reconstitute these banks as subsidiaries of the State Bank; and the Governments of Bombay and the Punjab as well as the Reserve Bank of India have agreed to the reconstitution on similar lines of the State Bank of Saurashtra, the Bank of Patiala and the State Bank of Hyderabad respectively.

3. The scheme for reconstitution provides for the transfer to and vesting in the State Bank of India of the share capital of each of the eight banks which have accepted the proposals. Compensation will be payable to the existing share-

holders (including a State Government or the Reserve Bank of India as the case may be) on the basis of the excess of the assets over the liabilities, representing the real value of the paid-up capital. Such compensation will be determined, in the event of a dispute, by an impartial tribunal, in accordance with the principles indicated in the Bill.

4. Provision is being made for minority shareholding, by private shareholders up to 45 per cent. of the issued capital, in the case of each of the reconstituted banks. The management and administration of the reconstituted institutions will be entrusted to Boards of Directors on which the State Bank of India will be adequately represented. The other provisions made in the Bill are generally based on those contained in the State Bank of India Act, 1955."—Gaz. of Ind., 1959, Extra., Pt. II, Sec. 2, page 274.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by the Bombay Reorganisation (A.L.O.), 1961.
—Amended by Acts LVI of 1962; LV of 1963.
—Extended by Regns. VI of 1963; XI of 1963.
—Repealed in part by Act LII of 1964.

[THE] STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959 (ACT XXXVIII OF 1959)*

[10th September, 1959.]

An Act to provide for the formation of certain Government or Government associated banks as subsidiaries of the State Bank of India and for the constitution, management and control of the subsidiary banks so formed, and for matters connected therewith, or incidental thereto.

Be it enacted by Parliament in the Tenth year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz., of Ind., 1959, Ext., Pt. II, Sec. 2, P. 274; for Report of Joint Committee, see ibid p. 608.

The Act is extended to the Union Territories of—
(1) Goa, Daman and Diu by Regn. XI of 1963 (1-7-1965).
(2) Dadra & Nagar Haveli by Regn. VI of 1963 (1-7-1965).

CHAPTER I
PRELIMINARY

1. Short title.— This Act may be called THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959.

2. Definitions.— In this Act, unless the context otherwise requires,—

(a) "appointed day" means,—
(i) in relation to an existing bank, the date on which the corresponding new bank is constituted under section 3;
(ii) in relation to a new bank, the date on which that new bank is constituted under section 3;
(iii) in relation to the Hyderabad Bank, the date on which the amendments to the State Bank of Hyderabad Act, 1956, take effect under Part VII of the Third Schedule;
(iv) in relation to the Saurashtra Bank, the date on which the amendments to the Saurashtra State Banks (Amalgamation) Ordinance, 1950, take effect under Part V of the Third Schedule;

(b) "corresponding bank" means,—
(i) in relation to the State Bank of Bikaner, the Bank of Bikaner, Limited;
(ii) in relation to the State Bank of Indore, the Bank of Indore, Limited;
(iii) [Omitted by Act 56 of 1962, S. 3 (1-1-1963);].

(iv) in relation to the State Bank of Mysore, the Bank of Mysore, Limited;

(v) in relation to the State Bank of Patiala, the Bank of Patiala;

(vi) in relation to the State Bank of Travancore, the Travancore Bank, Limited;

(c) "corresponding new bank" means,—

(i) in relation to the Bank of Bikaner, Limited, the State Bank of Bikaner;

(ii) in relation to the Bank of Indore, Limited, the State Bank of Indore;

(iii) [Omitted by Act 56 of 1962, S. 3 (1-1-1963);]

(iv) in relation to the Bank of Mysore, Limited, the State Bank of Mysore;

(v) in relation to the Bank of Patiala, the State Bank of Patiala;

(vi) in relation to the Travancore Bank, Limited, the State Bank of Travancore;

(d) "existing bank" means any of the following banks, namely:—

(i) Bank of Bikaner, Limited;

(ii) Bank of Indore, Limited;

(iii) [Omitted by Act 56 of 1962, S. 3 (1-1-1963);]

(iv) Bank of Mysore, Limited;

(v) Bank of Patiala;

(vi) Travancore Bank, Limited;

(e) "Hyderabad Bank" means the Hyderabad State Bank constituted under the Hyderabad State Bank Act, 1350-F, and renamed the State Bank of Hyderabad under sub-section (1) of section 3 of the State Bank of Hyderabad Act, 1956;

(f) "new bank" means any of the banks constituted under section 3;

(g) "prescribed" means prescribed by regulations made under this Act;

(h) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

(i) "Saurashtra Bank" means the State Bank of Saurashtra constituted under the Saurashtra State Banks (Amalgamation) Ordinance, 1950;

(j) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955;

(k) "subsidiary bank" means any new bank and includes the Hyderabad Bank and Saurashtra Bank;

(l) "Tribunal" means the Tribunal constituted under section 15.

CHAPTER II

*[CONSTITUTION OF NEW BANKS AND CHANGE OF NAME OF ANY SUBSIDIARY BANK]

3. Establishment of new banks.— With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, there shall be constituted the following new banks, namely:—

(a) the State Bank of Bikaner;†

(b) the State Bank of Indore;†

*(c) Omitted.

(d) the State Bank of Mysore;†

(e) the State Bank of Patiala;

Section 3 — Note 1

(1) State Bank of Mysore is successor in interest of the erstwhile Bank of Mysore and has right to proceed against the properties mortgaged in favour of the Bank of Mysore. AIR 1971 Mys 156 (158) = (1970) 2 Mys LJ 577 (DB).

(f) the State Bank of Travancore;†

and different dates may be specified for different new banks.

[*] Heading of Chap. II substituted and clause (c) omitted by Act 56 of 1962, S. 3 (14-12-1962).

[†] Existing Banks of these Banks were dissolved w. e. f. 8-1-1966—See S.O., 88, Gaz. of Ind., 8-1-1966, Pt. II, S. 3 (ii), p. 96.

°[**3A. Change of name of a subsidiary bank.**— (1) The Central Government after consulting the State Bank and the Reserve Bank may, by notification in the Official Gazette, direct that the name of any subsidiary bank shall, with effect from such date as may be specified in this behalf, be changed to any other name and thereupon any reference to that subsidiary bank in this Act or any other law for the time being in force or in any contract, instrument or document shall be construed as a reference to that bank by its new name.

(2) The change in the name of a subsidiary bank under sub-section (1) shall not affect any rights or obligations of that bank or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against that bank by its former name may be continued by or against it by its new name.]

[°] Inserted by Act 56 of 1962, S. 3 (14-12-1962).

4. New banks to be bodies corporate.— (1) Every new bank shall be a body corporate with perpetual succession and a common seal and shall sue and be sued in its name.

(2) The body corporate constituting each of the new banks shall consist of the State Bank and other shareholders, if any, for the time being of the new bank.

(3) Every new bank shall carry on the business of banking and other business in accordance with the provisions of this Act, and shall have power to acquire and hold property, whether movable or immovable, for the purposes of its business and to dispose of the same.

5. Head office and branches of new banks.— (1) The head office of each of the new banks shall be at such place as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) Every new bank shall maintain as its branches all branches of the corresponding bank in existence immediately before the appointed day, and shall not establish any new branch or discontinue any branch except in consultation with the State Bank and with the approval of the Reserve Bank.

6. Authorised capital of new banks.— (1) Subject to the provisions of this Act, the authorised capital of the State Bank of Mysore and the State Bank of Travancore shall be rupees two crores each, and the authorised capital of every other new bank shall be rupees one crore.

(2) The authorised capital of every new bank shall be divided into shares of one hundred rupees each.

(3) Notwithstanding anything contained in this section, the State Bank may, with the approval of the Reserve Bank, authorise a new bank to increase or reduce its authorised capital:

Provided that where the authorised capital is so increased, the shares issued shall be of the denomination specified in sub-section (2).

7. Issued capital of new banks.— (1) On the appointed day, the issued capital of a new bank shall consist of such amount divided into fully paid-up shares of hundred rupees each, as the State Bank may, with the approval of the Reserve Bank, fix.

(2) All shares in the issued capital of a new bank shall, on the appointed day, stand allotted to the State Bank.

(3) The State Bank shall, as soon as may be, after the determination, if any, by the Tribunal, of the amount of compensation payable in respect of an exist-

ing bank, consider whether any increase in, or reduction of, the issued capital of the corresponding new bank as fixed under sub-section (1), by way of adjustment, or transfer from, or to, the reserves of such bank, or in any other manner, is necessary or expedient and may, thereafter with the approval of the Reserve Bank, direct that bank to increase or reduce its issued capital.

(4) Without prejudice to the provisions contained in sub-section (3), a new bank may, with the approval of the State Bank and the Reserve Bank, increase from time to time, its issued capital and the capital so increased shall consist of fully paid-up shares to be issued in such manner as the State Bank may, with the approval of the Reserve Bank, direct.

(5) No increase or reduction in the issued capital of a new bank shall be made in such a manner that the State Bank holds at any time less than fifty-five per cent of the issued capital of that bank.

8. **Reserve fund of the new banks.**— (1) Every new bank shall establish a reserve fund which, subject to the provisions of sub-section (3) of section 7 and of sub-section (2) of this section, shall—

(a) on the appointed day, consist of such sum as the State Bank, with the approval of the Reserve Bank, may determine; and

(b) after the appointed day, consist of the sum aforesaid together with such further sums as may be transferred to the reserve fund by the new bank out of its annual net profits before declaring a dividend.

(2) The State Bank shall, as soon as may be after the determination, if any, of the amount of compensation by the Tribunal, in respect of an existing bank, consider whether any increase in, or reduction of, the reserve fund of the corresponding new bank, by way of adjustment, by transfer from, or to, any account, or towards provision for bad and doubtful debts, depreciation of any assets or contingencies, or for any other purpose, is necessary, and may, thereafter, with the approval of the Reserve Bank, direct that bank to so increase or reduce its reserve fund.

9. **Transfer of shares of existing banks to State Bank.**— On the constitution of a new bank, all shares in the capital of the corresponding bank, where such corresponding bank has a share capital, shall stand transferred to, and shall vest in, the State Bank, free of all trusts, liabilities and encumbrances.

Note.—Under Section 5 of the State Bank of Hyderabad Act, 1956, all shares in the capital of the Hyderabad State Bank are transferred to and vested in the Reserve Bank of India.

10. **Transfer of undertaking of existing banks to new banks.**— (1) Subject to the other provisions contained in this Act, when a new bank is constituted, the undertaking of the corresponding bank shall stand transferred to, and vest in, the new bank.

(2) The undertaking of the corresponding bank referred to in sub-section (1) shall be deemed to include all rights, powers, authorities and privileges and all property, movable and immovable, including cash balances, reserve funds investments and all other interests and rights in, or arising out of, such property and all books, accounts and documents relating thereto as may be in the possession of that bank immediately before the appointed day, and shall also be deemed to include all debts, liabilities and obligations of whatever kind, then existing of that bank.

(3) Without prejudice to the other provisions contained in this Act, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature, subsisting or having effect immediately before the appointed day and to which any existing bank is a party, or which are in favour of that bank, shall be of full force and effect against or in favour of the corresponding new bank, as the case may be, and may be enforced or acted upon as fully and effectually as if instead of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank.

(4) If, on the appointed day, any suit, appeal or other legal proceeding of whatever nature by or against an existing bank is pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of transfer to the corresponding new bank of the undertaking of the existing bank, or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corresponding new bank.

11. Transfer of services of employees of existing banks.—(1) Save as otherwise provided in this Act, every employee of an existing bank in the employment of that bank immediately before the appointed day, shall, on and from that day, become an employee of the corresponding new bank and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day, if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and shall continue to do so unless and until his employment in that bank is terminated or until his remuneration or other terms and conditions of service are revised or altered by the corresponding new bank under, or in pursuance of, any law, or in accordance with any provision which, for the time being, governs his service:

Provided that nothing contained in this sub-section shall apply to an employee of the Bank of Patiala who holds a civil post under the State of Punjab unless, prior to the appointed day, he has intimated his consent to become an employee of the State Bank of Patiala by notice in writing, given to the Government of that State through the Bank of Patiala.

(2) Any person who, on the appointed day, is entitled to, or is in receipt of, a pension or other superannuation or compassionate allowance or other benefit from an existing bank or from any provident, pension or other fund or from any authority administering such fund, shall be entitled to be paid by, and to receive from, the corresponding new bank or any provident, pension or other fund or from any authority administering such fund, the same pension, allowance or benefit, so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the State Bank and its decision thereon shall be final.

(3) For the persons who immediately before the appointed day are the trustees of, or the members of any authority administering, any fund constituted for the benefit of the employees of an existing bank, there shall be substituted as trustees or members such persons as the State Bank may, by general or special order, specify.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or any other law or in any agreement for the time being in force, the transfer from an existing bank of the services of any officer or employee of that bank to the corresponding new bank in terms of this section shall not entitle any such officer or employee, to any compensation to which he would, but for this provision, have been entitled under any such law or agreement, and no claim in respect of such compensation shall be entertained by any Court, tribunal or other authority.

12. Special provision for transfer of foreign assets.— (1) If, according to the laws of any country outside India, the provisions of this Act by themselves

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Section 11 — Note 1

(1) Section 11 of the Act of 1959 preserved the service conditions and the rights of employees of the erstwhile Hyderabad Bank which had accrued by then to them. Those rights can certainly be enforced against the new Bank which has come into existence pursuant to the Act. Therefore where P has been promoted in the year 1964 to the grade of a junior officer it could not be said that the service conditions of the petitioner which governed him in 1959 when Section 11 came into force are still in existence but P is really governed by service conditions of a junior officer who has been appointed in 1964 and hence P cannot take advantage of Section 11. 1971 Lab IC 350 (352) = (1971) 1 Andh Pra LT 240.

are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of an existing bank to, or in, the corresponding new bank, the affairs of the existing bank in relation to such asset or liability shall, on and from the appointed day, stand, entrusted to the general manager for the time being of the corresponding new bank, and the general manager may exercise all powers and do all such acts and things as are exercised or done by the existing bank for the purpose of effectively winding up the affairs of that bank,

(2) The general manager of the corresponding new bank shall, in exercise of the powers conferred on him by sub-section (1), take all such steps as may be required by the laws of any such country outside India for the purpose of effecting such transfer or vesting, and in connection therewith the general manager may either himself or through any person authorised by him in this behalf, realise any asset and discharge any liability of the existing bank and transfer the net proceeds thereof to the corresponding new bank.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), on and from the appointed day, no person shall make any claim or demand or take any proceeding in India against any existing bank or any person acting in its name or on its behalf except in so far as may be necessary for enforcing the provisions of this section or except in so far as it relates to any offence committed by such person.

*[(4) For the purposes of this section,—

(a) "corresponding new bank" means in relation to the Bank of Jaipur Limited, the institution constituted under section 3 as the State Bank of Bikaner;

(b) "existing bank" includes the Bank of Jaipur Limited.]

[*] Inserted by Act 56 of 1962, S. 3 (1-1-1963).

CHAPTER III

COMPENSATION

13. Compensation to shareholders of existing banks other than the Bank of Patiala.— (1) Every person who and any State Government which immediately before the appointed day is registered as a holder of shares in the books of an existing bank shall be given by the State Bank such compensation in respect of the transfer to the State Bank of the shares in the capital of that bank as is determined in accordance with the principles contained in the First Schedule.

(2) The amount of compensation to be given in accordance with the principles contained in the First Schedule shall be determined in the first instance by the State Bank, in consultation with the Reserve Bank, and shall be offered by it to all those to whom compensation is payable under sub-section (1) in full satisfaction thereof.

(3) If the amount of compensation offered by the State Bank in terms of sub-section (2) is not acceptable to any shareholder of an existing bank, such shareholder may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government, in writing, to have the matter referred to the Tribunal.

(4) If, before the date notified under sub-section (3), the Central Government receives requests, in terms of that sub-section, from not less than one-fourth in number of the shareholders, holding not less than one-fourth in value of the paid-up share capital of the existing bank, the Central Government shall have the matter referred to the Tribunal for decision.

(5) If, before the date notified under sub-section (3), the Central Government does not receive requests as provided in that sub-section, the amount of compensation offered by the State Bank, and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all parties concerned.

(6) Subject to the provisions of the succeeding sub-sections, the amount of compensation shall be paid,—

(a) if the shareholder has not applied for shares of the corresponding new bank in accordance with the provisions of sub-section (7), by a cheque drawn on the State Bank: and

(b) if he has applied for shares of the corresponding new bank in accordance with the provisions of that sub-section, in shares of the corresponding new bank to the extent of the value of such shares allotted to him and the balance by a cheque drawn on the State Bank.

(7) Any shareholder of an existing bank to whom compensation is payable under this section may, before the expiry of three months from the date of the final determination of the amount of such compensation under sub-section (5), or such extended period as the State Bank may think fit in any particular case to allow, apply to the State Bank for the transfer to him of shares in the capital of the corresponding new bank in lieu of such compensation or part thereof; and for the purposes of such transfer, the value of each share of the corresponding new bank shall be such as may be determined in this behalf by the State Bank with the approval of the Reserve Bank.

(8) On receipt of an application under sub-section (7), the State Bank shall issue to the corresponding new bank a warrant, in the form specified in the rules made under this Act, directing it to transfer in favour of the person specified in the warrant such number of shares as may be allotted to the applicant in accordance with sub-sections (9) and (10), out of the shares in the capital of that bank standing allotted to the State Bank under the provisions of this Act, and the corresponding new bank shall be bound to comply with such warrant.

(9) A shareholder of an existing bank who has applied for shares in the capital of the corresponding new bank shall be allotted—

(a) such number of shares, having such total face value as would bear to forty-five per cent. of the issued capital of the corresponding new bank the same proportion as the paid-up value of his shares in the capital of the existing bank in respect of which he is paid compensation bears to the total paid-up capital of that bank; and

(b) if the total number of shares allotted under clause (a) to all applicants is less than forty-five per cent. of the issued capital of the corresponding new bank, such number of additional shares as the State Bank may deem fit having regard to the provisions of this Act, the circumstances of the case and the desirability of securing as wide a distribution of shares among as large a number of share-holders as possible.

Explanation.— For the purpose of determining the number of shares under this sub-section fractions of a share shall be disregarded.

(10) Notwithstanding anything contained in sub-section (9), an allotment of shares under that sub-section shall not be made in such a manner that the State Bank holds at any time less than fifty-five per cent. of the issued capital of the corresponding new bank.

(11) A warrant issued by the State Bank under sub-section (8) shall not be liable to duty under the Indian Stamp Act, 1899.

(12) Nothing contained in this section shall affect the rights inter se between the holder of any share in an existing bank, and any other person who may have an interest in such share and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the State Bank.

*[(13) For the purposes of this section,—

(a) "corresponding new bank" does not include the State Bank of Patiala and means in relation to the Bank of Jaipur Limited the institution constituted under section 3 as the State Bank of Bikaner;

(b) "existing bank" includes the Bank of Jaipur Limited, but does not include the Bank of Patiala.]

[*] Substituted for former sub-section (13) by the State Associated Banks (Miscellaneous Provisions) Act, 1962 (56 of 1962), S. 3 (1-1-1963).

Note: As to payment of compensation to shareholders of the Hyderabad State Bank, see S. 6 of the Hyderabad State Bank Act, 1956.

14. Compensation payable by the State Bank in respect of the Bank of Patiala, the Saurashtra Bank and the Hyderabad Bank.—(1) The State Government of Punjab in respect of the Bank of Patiala, the *[State Government of Gujarat] in respect of the Saurashtra Bank and the Reserve Bank in respect of the Hyderabad Bank, shall be given, by reason of the provisions of this Act or of the amendments contained in Part V or Part VII of the Third Schedule, such compensation by the State Bank as is determined in accordance with the principles contained in the First Schedule.

(2) The amount of compensation to be given in accordance with the principles contained in the First Schedule shall be determined in the first instance by the State Bank, and shall be offered by it to the State Government of Punjab, the *[State Government of Gujarat], or the Reserve Bank, as the case may be, in full satisfaction of the compensation payable under sub-section (1):

Provided that in determining the amount of compensation to be offered to the State Government of Punjab or the *[State Government of Gujarat], the State Bank shall consult the Reserve Bank.

(3) If the amount of compensation offered by the State Bank in terms of sub-section (2) is not acceptable to the State Government of Punjab, the *[State Government of Gujarat] or the Reserve Bank, as the case may be, the State Government concerned or the Reserve Bank, may, before such date as may be notified† by the Central Government in the Official Gazette, request the Central Government to have the matter referred to the Tribunal for decision, and where any such request is received, the Central Government shall refer the matter accordingly.

(4) If, before the date notified under sub-section (3), the State Government of Punjab, the *[State Government of Gujarat] or the Reserve Bank, as the case may be, has not made any such request, the amount of compensation offered by the State Bank, and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all parties concerned.

(5) The amount of compensation shall be paid by a cheque drawn on the Reserve Bank.

[*] Substituted for "State Government of Bombay" by the Bombay Reorganisation (Adaptation of Laws on Union Subjects) Order, 1961 (w. r. e. f. 1-5-1960).

[†] In respect of the Punjab 12-12-1960 and Gujarat 15-12-1960 are the dates notified—see Gaz. Ind., 1960, Extra., Pt. II, Sec. 3 (i), pages 709 and 717.

15. Constitution of the Tribunal.— (1) The Central Government may for the purposes of this Act constitute a Tribunal which shall consist of a Chairman and two other members.

(2) The Chairman shall be a person who is, or has been, a Judge of a High Court or has been a Judge of the Supreme Court and of the two other members, one shall be a person, who, in the opinion of the Central Government, has had experience of commercial banking and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government shall fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal so reconstituted from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under this Act, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

16. Tribunal to have powers of a civil Court.— (1) The Tribunal shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits; and

(d) issuing commissions for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force, the Tribunal shall not compel the Reserve Bank, the State Bank or any subsidiary bank—

(a) to produce any books of account or other documents which the Reserve Bank, the State Bank or the subsidiary bank claims to be of a confidential nature;

(b) to make any such books or documents part of the record of the proceedings before the Tribunal; or

(c) to give inspection of any such books or documents to any party before it or to any other person.

17. Procedure of the Tribunal.—(1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its enquiry in camera.

(3) Any clerical or arithmetical mistake in any order of the Tribunal or any error arising therein from any accidental slip or omission may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.

CHAPTER IV

SHARES OF THE SUBSIDIARY BANKS

18. Transferability of shares.— (1) Save as otherwise provided in sub-section (2), the shares of a subsidiary bank shall be freely transferable.

(2) Nothing contained in sub-section (1) shall entitle the State Bank to transfer any shares held by it in any subsidiary bank if such transfer will result in reducing the shares held by it to less than fifty-five per cent. of the issued capital of that subsidiary bank.

19. Restriction on individual holdings.—(1) No person shall be registered as a shareholder in respect of any shares in a subsidiary bank held by him, whether in his own name or jointly with any other person, in excess of two hundred shares, or be entitled to payment of any dividend on the excess shares held by him, or to exercise any of the rights of a shareholder in respect of such excess shares otherwise than for the purpose of selling them:—

Provided that nothing contained in this sub-section shall apply to—

(a) the State Bank;

(b) a State Government;

(c) a Corporation;

(d) an insurer as defined in the Insurance Act, 1938.

(e) a local authority;

(f) a co-operative society;

(g) a trustee of a public or private religious or charitable trust;

(h) a shareholder of an existing bank who is allotted any shares under sub-section (9) of section 13;

(2) Notwithstanding anything contained in sub-section (1), no person referred to in the proviso to that sub-section, other than the State Bank, shall be entitled to exercise voting rights in respect of any shares held by such person *[in excess of one per cent.] of the issued capital of the subsidiary bank concerned.

[*] Substituted for 'in excess of five per cent' by the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), Section 30 (1-2-1964).

20. Shares to be approved securities.—Notwithstanding anything contained in the Acts hereinafter mentioned in this section, the shares of a subsidiary bank shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882, and also to be approved securities for the purposes of Insurance Act, 1938, and the Banking Companies Act, 1949.

21. Register of shareholders.—Every subsidiary bank shall keep at its head office a register, in one or more books, of the shareholders and shall enter therein the following particulars so far as they may be available:—

(i) the names, addresses and occupations, if any, of the shareholders and a statement of the shares held by each shareholder, distinguishing each share by its denoting number;

(ii) the date on which each person is so entered as a shareholder;

(iii) the date on which any person ceases to be a shareholder; and

(iv) such other particulars as may be prescribed.

22. Trusts not to be entered on the register.—Notwithstanding anything contained in section 19, no notice of any trust, express, implied or constructive, shall be entered on the register of shareholders of a subsidiary bank or be receivable by it in respect of its shares.

CHAPTER V
MANAGEMENT OF SUBSIDIARY BANKS

23. Certain officers to vacate office.—Every person holding office as chairman, director, member of the Board of Management (including a member of a local or advisory committee), managing director, general manager, manager (other than manager of a branch), deputy managing director, deputy general manager, assistant general manager or adviser, as the case may be, in an existing bank (other than the Bank of Patiala), the Hyderabad Bank and the Saurashtra Bank immediately before the appointed day, shall be deemed to have vacated that office on the appointed day, and notwithstanding anything contained in this Act or in any other law for the time being in force or in any agreement or contract, such person shall not be entitled to any compensation for the loss of office or for the premature termination of any agreement or contract relating to his employment, except such pension, compensation or other benefit as the corresponding new bank, the Hyderabad Bank or the Saurashtra Bank, as the case may be, may, with the approval of the State Bank, grant to him, having regard to what he would have received if this Act had not been passed and if his employment had ceased on the appointed day in the ordinary course:

Provided that nothing in this section shall be deemed to prevent any person who has so vacated his office in any of the said banks from being renominated or reappointed to any office in a subsidiary bank in accordance with the provisions of this Act.

24. Management.—(1) The State Bank may, from time to time, give directions and instructions to a subsidiary bank in regard to any of its affairs and business, and that bank shall be bound to comply with the directions and instructions so given.

(2) Subject to any such directions and instructions, the general superintendence and conduct of the affairs and business of a subsidiary bank shall, as from the appointed day, vest in a Board of Directors who may, with the assistance of the general manager, exercise all powers and do all such acts and things as may be exercised or done by that bank.

(3) The Board of Directors of a subsidiary bank shall, in discharging its functions under this Act, act on business principles, regard being had to public interest.

25. Composition of the Board of Directors.—(1) Subject to the provisions of subsection (2), the Board of Directors of a subsidiary bank shall consist of the following:—

(a) the chairman for the time being of the State Bank, ex officio;

(b) an officer of the Reserve Bank, to be nominated by that Bank;

(c) not more than five directors to be nominated by the State Bank of whom not more than three shall be officers of that bank;

(d) two directors to be elected in the prescribed manner by the shareholders, other than the State Bank:

Provided that if the total amount of the holdings of all such shareholders registered in the books of the subsidiary bank three months before the date fixed for election is below five per cent. of the total issued capital, or if there are no shareholders other than the State Bank registered on the books of the subsidiary bank, the directors to be elected by the shareholders shall be nominated by the State Bank and such directors shall, for the purposes of this Act, be deemed to be directors elected under this clause;

(e) a director, if any, to be nominated by the Central Government in consultation with the State Bank.

(2) Notwithstanding anything contained in clause (d) of sub-section (1), on the first constitution of the Board of Directors, the directors referred to in the said clause shall be appointed by the State Bank and the directors so appointed shall, for the purposes of this Act, be deemed to have been elected within the meaning of the said clause.

(3) If, for any reason, a director of a subsidiary bank nominated under clause (b) of sub-section (1) is unable to exercise his functions or to discharge his duties as such director, the Reserve Bank may nominate any of its officers to exercise all the functions and to discharge all the duties of such director whenever he is so unable to exercise his functions or discharge his duties, and the officer so nominated shall for all purposes of this Act be deemed to be a director of the subsidiary bank.

(4) An officer of the Reserve Bank or the State Bank may be nominated as a director of a subsidiary bank by virtue of his office.

(5) The directors nominated under sub-section (2) shall retire at the expiry of one year after the appointed day.

(6) Any nomination or appointment of a director made by the State Bank under this Act shall, except in so far as it relates to an Officer of that bank, be in consultation with the Reserve Bank.

26. Term of office of directors.—(1) A director of a subsidiary bank, if nominated under clause (b) of sub-section (1) of section 25 or if an officer of the State Bank and nominated under clause (c) or if an officer of the Central Government and nominated under clause (e) of that sub-section, shall hold office during the pleasure of the authority nominating him.

(2) Subject to the provisions contained in section 25, a director nominated under clause (c) of sub-section (1) of that section and not being an officer of the State Bank, a director elected under clause (d) and a director, not being an officer of the Central Government, nominated under clause (e), of that sub-section, shall hold office for three years and thereafter until his successor is duly nominated or elected, as the case may be.

(3) A director of a subsidiary bank vacating his office shall be eligible for re-nomination or re-election, as the case may be.

27. Disqualification for directorship.—(1) A person shall be disqualified to be a director of a subsidiary bank, if—

(a) he holds the office of director, provisional director, promotor, agent, or manager of any banking company or a banking company for the formation of which a prospectus has been issued; or

(b) he is a salaried officer of Government; or

(c) he has been removed or dismissed from the service of Government or a local authority or a corporation or a company in which not less than fifty-one per cent. of the paid-up share capital is held by Government; or

(d) he holds any office of profit under the subsidiary bank; or

(e) he is, or at any time has been, adjudicated an insolvent or has suspended payment of his debts or has compounded with his creditors; or

(f) he is of unsound mind and stands so declared by a competent court; or

(g) he is, or has been, convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or

(h) in the case of an elected director, he is not registered as a holder of unencumbered shares in the subsidiary bank of a nominal value of at least one thousand rupees:

Provided that the disqualification mentioned in clause (b) shall not apply to an officer of the Central Government, nominated as a director under clause (e) of sub-section (1) of section 25:

Provided further that in the case of a director deemed to have been elected on the first constitution of the Board of Directors, the disqualification mentioned in clause (h) shall not operate for a period of six months from his becoming such director.

(2) No two persons who are partners of the same firm or are directors of the same private company or one of whom is an agent of the other or holds a power of attorney from a firm of which the other is a partner may be directors of a subsidiary bank at the same time.

(3) The nomination or election, as a director of any person who is a member of either House of Parliament or the Legislature of a State shall be void unless within two months of the date of nomination or election as such director, he ceases to be a member of Parliament or the Legislature of the State, and if any director is elected or nominated as a member of Parliament or the Legislature of a State, he shall cease to be a director as from the date of such election or nomination, as the case may be.

(4) Nothing contained in clause (d) of sub-section (1) shall be deemed to preclude any person from being a director of a subsidiary bank by reason only of his being a legal or technical adviser of that bank.

(5) In this section,—

(a) "banking company" has the same meaning as in the Banking Companies Act, 1949;

(b) "manager" means the chief executive officer, by whatever name called of a banking company;

(c) "private company" has the same meaning as in the Companies Act, 1956.

28. Vacation of office of directors.—If a director of a subsidiary bank—

(a) is, or has become, subject to any of the disqualifications mentioned in section 27; or

(b) resigns his office by giving notice in writing under his hand, in the case of a nominated director to the State Bank, and in the case of an elected director to the Board of Directors of the subsidiary bank, and his resignation is accepted; or

(c) is absent without leave of the Board of Directors for more than three consecutive meetings thereof:

his seat on the Board of Directors shall thereupon become vacant:

Provided that nothing in clause (b) or clause (c) shall apply to a director referred to in clause (b) of sub-section (1) of section 25 or to a director, being an officer of the State Bank, nominated under clause (c) or to a director, being an officer of the Central Government nominated under clause (e) of that sub-section.

29. General Manager.—(1) The State Bank shall, after consulting the Board of Directors of a subsidiary bank, and with the approval of the Reserve Bank, appoint a general manager for that subsidiary bank:

Provided that in the case of the first appointment of the general manager no such consultation with the Board of Directors of the subsidiary bank shall be necessary.

(2) Subject to the general control of the Board of Directors, the day-to-day administration and management of the affairs of a subsidiary bank shall vest in

the general manager, and the general manager shall exercise such other powers and perform such other duties as may be delegated to him by the Board of Directors.

(3) The general manager of a subsidiary bank—

(a) shall devote his whole time to the affairs of that bank:

Provided that the general manager of the subsidiary bank may, with the approval of the State Bank and the Reserve Bank, be a director of any other institution;

(b) shall hold office for such term not exceeding four years and subject to such conditions as the State Bank may, with the approval of the Reserve Bank, specify at the time of his appointment;

(c) shall receive such salary and allowances as may be determined by the State Bank with the approval of the Reserve Bank.

(4) The general manager vacating his office shall be eligible for reappointment.

(5) The State Bank may, with the approval of the Reserve Bank, for any sufficient reason, remove from office the general manager of a subsidiary bank:

Provided that no general manager shall be removed from office unless he has been given an opportunity of showing cause against such removal.

30. Remuneration of directors.—A director of a subsidiary bank shall be paid for attending the meetings of the Board of Directors or of any of its committees and for attending to any other business of the subsidiary bank such fees and allowances as may be prescribed:

Provided that no fee shall be payable to the chairman of the State Bank or any other director who is a wholetime officer of the Central Government or the Reserve Bank or the State Bank.

31. Removal from office of director.—(1) The State Bank may, with the approval of the Reserve Bank, for any sufficient reason, remove from office a director nominated under clause (c) of sub-section (1) of section 25 and not being an officer of the State Bank.

(2) The Central Government may, in consultation with the State Bank, for any sufficient reason, remove from office a director nominated under clause (e) of sub-section (1) of section 25 and not being an officer of the Central Government.

(3) Any director elected under clause (d) of sub-section (1) of section 25, may be removed from office—

(a) by the State Bank, with the approval of the Reserve Bank, if at the time of the removal there are no shareholders other than the State Bank registered in the books of the subsidiary bank concerned;

(b) by a resolution passed by a majority of the votes of such shareholders holding in the aggregate not less than one-half of the share capital held by all such shareholders:

Provided that if the total amount of the holdings of all shareholders, other than the State Bank, registered in the books of the subsidiary bank, on the date of the resolution, is below five per cent. of the total issued capital, the resolution shall not have effect unless confirmed by the State Bank.

(4) No director shall be removed from office under sub-section (1) or sub-section (2) unless he has been given an opportunity of showing cause against such removal.

32. Appointment of another person for discharging the duties of general manager during his absence.—If the general manager of a subsidiary bank is rendered incapable of discharging his duties by reason of infirmity or otherwise or is absent on leave or otherwise in circumstances not involving the vacation of his office, the State Bank may appoint another person to officiate for the general manager until the date on which the general manager resumes duty.

33. **Casual vacancies among directors.**—(1) Where any vacancy occurs before the expiry of the term of office of a director of a subsidiary bank, the vacancy shall be filled—

(a) in the case of a director nominated under clause (c) of sub-section (1) of section 25, not being an officer of the State Bank, by nomination by the State Bank;

(b) in the case of a director elected under clause (d) of sub-section (1) of section 25, by election or where the proviso to that clause is applicable, by nomination by the State Bank:

Provided that where the duration of the vacancy in the office of an elected director is likely to be less than six months, the vacancy may be filled by the remaining directors by co-opting a person from amongst the shareholders entitled to elect a director under clause (d) of sub-section (1) of section 25 who is not disqualified under section 27;

(c) in the case of a director nominated under clause (e) of sub-section (1) of section 25, not being an officer of the Central Government, by nomination by the Government in consultation with the State Bank.

(2) A person nominated or elected or co-opted, as the case may be, under this section shall hold office for the unexpired portion of the term of his predecessor.

34. **Meetings of the Board of Directors.**—(1) The Board of Directors of a subsidiary bank shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(2) The chairman of the State Bank shall preside at every meeting of the Board of Directors of a subsidiary bank and, in his absence such one of the directors as may generally or in relation to any particular meeting be authorised by the chairman in this behalf shall preside; and in the absence of the chairman and also failing such authorisation, the directors of the subsidiary bank present at the meeting shall elect one from among themselves to preside at the meeting.

Explanation.—For the purposes of this sub-section, "absence from a meeting" means non-attendance for any reason whatsoever at the meeting or any part of the meeting during which any business is transacted.

(3) All questions at a meeting of the Board of Directors of a subsidiary bank shall be decided by a majority of the votes of the directors present, and in case of equality of votes, the person presiding at the meeting shall have a second or casting vote.

(4) Where any of the directors specified in clauses (a) and (b) of sub-section (1) of section 25 or any of the directors, being an officer of the State Bank specified in clause (c) of that sub-section is unable to attend any meeting of the Board of Directors of a subsidiary bank, and the State Bank or any other such director as may be present at the meeting considers that the State Bank would not be adequately or effectively represented at such meeting by reason of the absence of any such director, the State Bank or the director present may give notice in writing to that subsidiary bank—

(i) that the meeting should be adjourned to such date as may be indicated in the notice; or

(ii) that any matter, action, step or proceeding proposed to be considered, taken or carried out at that meeting, should not be so considered, taken or carried out; or

(iii) that no decision should be taken at that meeting on any such matter, action, step or proceeding;

and that subsidiary bank and its Board of Directors shall be bound to comply with such notice and act accordingly.

(5) A director of a subsidiary bank who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal, entered into or proposed to be entered into or made by or on behalf of the subsidiary bank shall, at the earliest possible opportunity, disclose the nature of his interest to the Board of Directors of that bank, and any such director shall not be present at any meeting

of the Board of Directors when any such contract, loan, arrangement or proposal is discussed, unless his presence is required by the other directors for the purpose of eliciting information and where any director is so required to be present, he shall not vote on any such contract, loan, arrangement or proposal:

*[Provided that nothing contained in this sub-section shall apply to such director by reason only of his being—

(i) a shareholder (other than a director) holding not more than two per cent. of the paid-up capital in any public company as defined in the Companies Act, 1956, or any corporation established by or under any law for the time being in force in India or any co-operative society, with which or to which the subsidiary bank has entered into or made, or proposes to enter into or make, a contract, loan, arrangement or proposal; or

(ii) a director of the State Bank or of any other subsidiary bank being a director under clause (a) or clause (e) of sub-section (1) of section 25 or being an officer of the Reserve Bank or the State Bank nominated under clause (b) or clause (c) of that sub-section,]

(6) A copy of the minutes of every meeting of the Board of Directors of a subsidiary bank, together with copies of all connected papers, shall be forwarded to the State Bank and the Reserve Bank as soon as possible.

[*] Substituted for former proviso by Act 56 of 1962, S. 3 (vii) (14-12-1962).

35. Executive committee and other committees.—(1) There shall be an executive committee in respect of a subsidiary bank consisting of such directors as may be prescribed:

Provided that if any such director being an officer of the State Bank and nominated by that bank under clause (c) of sub-section (1) of section 25, is for any reason unable to exercise his functions or to discharge his duties in relation to the executive committee, the State Bank may depute any of its officers to exercise all the functions and to discharge all the duties of such director in relation to the executive committee whenever such director is so unable to exercise his functions or discharge his duties; and the officer so deputed shall, for all purposes of this Act, in so far as it applies to the executive committee, be deemed to be a director of the subsidiary bank.

(2) Subject to any regulations made under this Act, the executive committee may deal with any matter within the competence of the Board of Directors.

(3) A copy of the minutes of every meeting of the executive committee of a subsidiary bank shall be forwarded to the State Bank and be laid before the Board of Directors of the subsidiary bank as soon as possible after the meeting.

(4) Without prejudice to the powers of the executive committee, and subject to any regulations made under this Act, the Board of Directors of a subsidiary bank may constitute such and so many other committees, whether consisting wholly of the directors or wholly of other persons, or partly of the directors and partly of other persons, as it deems fit, to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Board of Directors may impose, be delegated to them by the Board of Directors.

CHAPTER VI
BUSINESS OF SUBSIDIARY BANKS

36. Subsidiary bank to act as agent of the State Bank.—(1) A subsidiary bank shall, if so required by the State Bank, act as agent of the State Bank at any place in India for—

(a) paying, receiving, collecting and remitting money, bullion and securities on behalf of any Government in India; and

(b) undertaking and transacting any other business which the Reserve Bank may, from time to time, entrust to the State Bank.

(2) The terms and conditions on which any such agency business shall be carried on by the subsidiary bank on behalf of the State Bank shall be such as may be determined by the State Bank, after consultation with the subsidiary bank and with the approval of the Reserve Bank.

*[(3) (4) • • • •]

[*] Sub-sections (3) and (4) omitted by Act 56 of 1962, S. 3 (viii) (14-12-62).

37. Other business which a subsidiary bank may transact.—(1) Subject to the other provisions contained in this Act, a subsidiary bank may carry on and transact the business of banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949, and may engage in such one or more of the other forms of business, as are specified in sub-section (1) of section 6 of that Act.

(2) The Central Government may, after consultation with the Reserve Bank and the State Bank, by order in writing—

(a) authorise subsidiary bank to do such other forms of business as the Central Government may consider necessary or expedient;

(b) direct that any form of business as is mentioned in the order shall be carried on subject to such restrictions, conditions and safeguards as may be specified therein; or

(c) prohibit a subsidiary bank from carrying on or transacting any form of business which, but for this clause, it is lawful for the subsidiary bank to engage in.

(3) Save as otherwise provided in sub-section (2), a subsidiary bank shall not engage in any form of business other than that referred to in sub-section (1).

38. Acquisition of business of other banks.—(1) A subsidiary bank may, with the approval of the State Bank, and shall, if the Reserve Bank, in consultation with the State Bank, so directs, enter into negotiations for acquiring the business, including the assets and liabilities of any other banking institution.

(2) The terms and conditions relating to such acquisition, if agreed upon by the Board of Directors of the subsidiary bank concerned and the directorate or management of the banking institution concerned and approved by the Reserve Bank, shall be submitted to the Central Government for its sanction and that Government may by order in writing (hereafter in this section referred to as the order of sanction) accord its sanction thereto.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force or any instrument regulating the constitution of the banking institution concerned, the terms and conditions as sanctioned by the Central Government shall come into effect on the date specified by the Central Government in this behalf in the order of sanction and be binding upon the subsidiary bank and the banking institution concerned as well as upon the shareholders (or, as the case may be, proprietors) and creditors of that banking institution.

(4) If for any reason the terms and conditions cannot come into effect on the date specified in the order of sanction, the Central Government may fix another suitable date for that purpose.

(5) On the date on which the terms and conditions as aforesaid come into effect, the business and the assets and liabilities of the banking institution concerned as covered by the acquisition shall, by virtue, and in accordance with the provisions, of the order of sanction stand transferred to, and become respectively the business and the assets and liabilities of, the subsidiary bank concerned.

(6) The consideration for the acquisition of the business and the assets and liabilities of any banking institution under this section may, if so agreed upon, be paid either in cash or by allotment of shares in the capital of the subsidiary bank concerned or partly in cash and partly by allotment of shares, and the subsidiary bank may, for the purpose of any such allotment, increase, subject to the other provisions contained in this Act relating to the increase of capital, the capital of the subsidiary bank by the issue of such number of shares as may be determined by the subsidiary bank.

(7) Any business acquired under this section shall thereafter be carried on by the subsidiary bank in accordance with the provisions of this Act subject to such exemptions or modifications as the Central Government may, by notifications in the Official Gazette, make in this behalf in consultation with the Reserve Bank:

Provided that no such exemption or modification shall be made so as to have effect for a period of more than seven years from the date of acquisition.

(8) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law or in any agreement for the time being in force, on the acquisition of the business and the assets and liabilities of any banking institution under this section, no officer or other employee of that banking institution shall be entitled to any compensation to which he may be entitled under that Act or that other law or that agreement, and no claim in respect of such compensation shall be entertained by any Court, tribunal or other authority if on his having accepted in writing an offer of employment by the subsidiary bank concerned on the terms and conditions proposed by it he has been employed in accordance with such terms and conditions.

(9) The Central Government may, if it considers necessary or expedient in the case of any banking institution in relation to which an order of sanction has been made under this section, appoint, whether before or after the coming into effect of the terms and conditions relating to the business and the assets and liabilities of that banking institution, a suitable person to take over the management of that banking institution for the purposes of winding up its affairs and distributing its assets, and the expenditure incurred in connection with such management (including the remuneration of the person so appointed and his staff, if any) shall be paid out of the assets of the banking institution or by the subsidiary bank concerned as the Central Government may direct.

(10) Simultaneously with the appointment of a suitable person, under sub-section (9) or immediately thereafter, the Central Government shall issue directions to be followed by that person in the management of that banking institution for the purposes aforesaid and thereupon—

(a) the provisions of the Companies Act, 1956, or the Banking Companies Act, 1949, or any other law for the time being in force or any instrument having effect by virtue of any such Act or law, in so far as they are inconsistent with such directions, shall cease to apply to, or in relation to that banking institution:

(b) all persons in charge of the management, including any person holding office as manager or director, of the banking institution, immediately before the issue of such directions, shall be deemed to have vacated their offices as such; and

(c) the person appointed to take over the management of the banking institution shall, in accordance with those directions, take all such steps as may be necessary to facilitate the winding up of its affairs and the distribution of its assets.

(11) The Central Government, when satisfied that nothing further remains to be done in order to wind up the affairs of the banking institution concerned may, by order in writing, direct that as from such date as may be specified therein, the banking institution shall stand dissolved and thereupon any such direction shall have effect notwithstanding anything to the contrary contained in any other law.

(12) No action under this section shall be questioned on the ground merely of any defect in the constitution of any banking institution in relation to which such action has been taken or in the constitution of its Board of Directors or in the appointment of any persons entrusted with the management of its affairs.

(13) The provisions of this section shall apply in relation to the acquisition by one subsidiary bank of the business, including the assets and liabilities, of another subsidiary bank as they apply in relation to the acquisition by a subsidiary bank of the business, including the assets and liabilities, of any other banking institution.

(14) In this section, "banking institution" includes any individual or any association of individuals (whether incorporated or not, or whether a department of Government or a separate institution), carrying on the business of banking.

CHAPTER VII
ACCOUNTS AND AUDIT

39. Closing of annual accounts.—A subsidiary bank shall cause its books to be closed and balanced on the thirty-first day of December in each year.

40. Disposal of profits.—(1) After making provision for bad and doubtful debts, depreciation in assets, equalisation of dividends, contribution to staff and superannuation funds and for all other matters for which provision is necessary by or under this Act or which are usually provided for by banking companies, a subsidiary bank may, out of its net profits, declare a dividend.

(2) The rate of dividend shall be determined by the Board of Directors of the subsidiary bank concerned.

(3) Nothing in this section shall be deemed to preclude the payment of interim dividends in such manner and to such extent as may be prescribed.

41. Audit.— (1) Subject to the provisions of section 42, the accounts of a subsidiary bank shall be audited by an auditor duly qualified to act as an auditor of companies under sub-section (1) of section 226 of the Companies Act, 1956, who shall be appointed by the State Bank, with the approval of the Reserve Bank.

(2) The auditor shall receive such remuneration as the State Bank may fix.

(3) No director or officer of a subsidiary bank shall be eligible to be its auditor during his continuance in office as such director or officer.

(4) The auditor shall be supplied with a copy of the annual balance sheet and profit and loss account, and a list of all books kept by the subsidiary bank, and it shall be the duty of the auditor to examine the balance sheet and profit and loss account with the accounts and vouchers relating thereto, and in the performance of his duties, the auditor—

(a) shall have, at all reasonable times, access to the books, accounts and other documents of that subsidiary bank;

(b) may, at the expense of that subsidiary bank, employ accountants and other persons to assist him in investigating such accounts; and

(c) may, in relation to such accounts, examine any director or any officer of that subsidiary bank.

(5) The auditor shall hold office for such term not exceeding one year as the State Bank may fix at the time of his appointment; and if any vacancy arises before the expiry of the term of an auditor, the vacancy may be filled by the State Bank, with the approval of the Reserve Bank.

(6) The auditor shall on relinquishing office be eligible for reappointment.

(7) The auditor shall make a report to the State Bank upon the annual balance-sheet and accounts of the subsidiary bank, and, in every such report, he shall state—

(a) whether, in his opinion, the balance sheet is a full and fair balance sheet containing all the necessary particulars and is properly drawn up so as to exhibit a true and correct view of the affairs of that subsidiary bank, and in case he has called for any explanation or information, whether it has been given and whether it is satisfactory;

(b) whether or not the transactions of that subsidiary bank which have come to his notice have been within the competence of the bank;

(c) whether or not the returns received from the offices and branches of that subsidiary bank have been found adequate for the purpose of his audit;

(d) whether the profit and loss account shows a true balance of profit or loss for the period covered by such account; and

(e) any other matter which he considers should be brought to the notice of the State Bank.

(8) The auditor shall forward a copy of the audit report to the subsidiary bank and to the Central Government.

(9) Without prejudice to the foregoing provisions, the Central Government may, at any time, appoint such number of auditors as it thinks fit to examine

and report on the accounts of a subsidiary bank, and the auditors so appointed shall have all the rights, privileges and authority in relation to the audit of the accounts of the subsidiary bank which an auditor appointed by the State Bank has under this section.

42. Temporary provision regarding existing auditors.— If, on the appointed day, any appointment of an auditor made by, or in respect of, an existing bank, the Hyderabad Bank or the Saurashtra Bank, as the case may be, is subsisting, the State Bank may, on or after such day, either confirm the appointment in accordance with the provisions of this Act, subject to such modifications of the terms and conditions of the appointment, as it may deem necessary, or terminate the appointment; and may, if it so terminates the appointment, fix such remuneration as appears to it to be reasonable having regard to the work already done, functions discharged, or duties performed by the auditor concerned.

43. Returns to be furnished by a subsidiary bank.— (1) A subsidiary bank shall furnish to the State Bank and the Reserve Bank—

(a) within three months from the date on which its accounts are closed and balanced, its balance sheet, together with the profit and loss account and the auditor's report, and a report by the Board of Directors on the working of the subsidiary bank during the period covered by the accounts; and

(b) any other information relating to the affairs and business of the subsidiary bank which the State Bank or the Reserve Bank may require.

(2) The balance sheet and the profit and loss account of a subsidiary bank shall be signed by the general manager and a majority of the directors of the subsidiary bank.

44. General meetings.— (1) A general meeting (hereinafter referred to as an annual general meeting) of a subsidiary bank shall be held annually before the end of March at the place where the head office of the subsidiary bank is situate, and any other general meeting may be convened by the Board of Directors at any time.

(2) The shareholders present at an annual general meeting shall be entitled to discuss the balance sheet and profit and loss account of the bank concerned, made up to the previous 31st day of December, the report of the Board of Directors on the working of that bank for the period covered by the accounts and the auditors' report on the balance sheet and accounts.

(3) Nothing contained in this section relating to an annual general meeting shall apply in relation to a subsidiary bank if, as on the previous 31st day of December, all the shares in the issued capital of that bank are held by the State Bank.

CHAPTER VIII

MISCELLANEOUS

45. Power to issue directions for removing difficulties.— For the purpose of facilitating the full and effective transfer of the undertaking of an existing bank in accordance with the provisions of this Act, or in order to remove any difficulty which in the opinion of the Central Government has arisen or is likely to arise in connection with such transfer, the Central Government may, in consultation with the Reserve Bank, give such directions to any existing bank or the State Bank as appear to it to be necessary and the said bank or the State Bank, as the case may be, shall comply with such directions.

46. Observers for existing banks and the Saurashtra Bank.— (1) The State Bank may, in relation to any existing bank or the Saurashtra Bank, at any time before the appointed day,—

(a) depute one or more persons to watch the proceedings at any meeting of the Board of Directors, any committee or other body of the bank; require the bank to give an opportunity to the person or persons so deputed to be heard at such meetings and also require such person or persons to send a report of such proceedings to the State Bank;

(b) require the Board of Directors, any committee or other body of the bank to give in writing to any person specified by the State Bank in this behalf, at his usual address, all notices of, and other communications relating to, any meeting of the Board, committee or other body, as the case may be;

(c) appoint one or more persons to observe the manner in which the affairs of the bank or of its offices or branches are being conducted and make a report thereon; and

(d) require the bank to furnish the State Bank, within such time as may be specified by the State Bank, with any statement or information relating to the business or affairs of the bank including copies of the proceedings of any meeting of the Board of Directors, any committee or other body, of the bank.

(2) If a person deputed by the State Bank to watch the proceedings of any meeting of the Board of Directors, any committee or other body, as the case may be, gives notice in writing to the bank that such person considers that any action, step or proceeding proposed to be taken or carried out by the bank will be detrimental to the State Bank or to the bank itself, such action, step or proceeding shall not be taken or carried out by the bank unless and until the State Bank approves in writing of such action, step or proceeding.

Explanation.— For the purposes of this section, "Board of Directors" in relation to the Saurashtra Bank, means its Board of Management.

47. Inspection.— (1) Without prejudice to the other provisions contained in this Act, the State Bank may, at any time, cause an inspection to be made by one or more of its officers of any existing bank, a new bank, the Hyderabad Bank or the Saurashtra Bank.

(2) It shall be the duty of every person who is or has at any time been a director, officer or other employee of a bank which is inspected under sub-section (1), to produce to any officer making the inspection, all such balances, books, accounts, securities and other documents in his custody or power and to furnish the said officer with any statements and information relating to the affairs of the bank as the said officer may require of him within such time as the said officer may specify.

(3) If any person—

(a) fails, within the stipulated time, to produce any balance, book, account, security or other document or to furnish any statement or information which under sub-section (2) it is his duty to produce or furnish, or to answer any question relating to the business of the bank under inspection which is asked by an officer making the inspection, or

(b) in any document or information required or furnished or while answering any question put to him, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement,

he shall be punishable with imprisonment for term which may extend to three years and shall also be liable to fine.

48. Cost of development programme.— (1) A subsidiary bank may accept any subsidies offered by the State Bank to meet—

(a) the cost of the whole or any part of any specific programme of development undertaken by that subsidiary bank with the approval of the State Bank; and

(b) such losses or expenditure as may be approved by the State Bank, with the consent of the Reserve Bank.

(2) For the purposes of the Indian Income-tax Act, 1922,* any subsidy received by a subsidiary bank under sub-section (1) shall not be treated as income, profits or gains of the subsidiary bank.

[*] Now Income-tax Act, 1961.

49. Special provision regarding existing officers and employees.— (1) Notwithstanding anything contained in any of the other provisions of this Act,

or in any other law or in any contract of service or other document, no appointment made or promotion, increment in salary, pension or allowance or any other benefit granted to any person by an existing bank or the Saurashtra Bank after the 10th day of February, 1958, and before the appointed day, which would not ordinarily have been made or granted or which would not ordinarily have been admissible under the rules or authorisations of the said banks or of any provident, pension or other fund in force before the 10th day of February, 1958, shall have effect or be payable or claimable from the subsidiary bank concerned, or from any provident, pension or other fund, or from any authority administering any such fund, unless the State Bank has, with the approval of the Reserve Bank, by a general or special order, confirmed the appointment, promotion or increment or has directed the grant of the pension, allowance or other benefit, as the case may be.

(2) Where any officer or other employee of an existing bank or of the Saurashtra Bank has received any amount by reason of such appointment, promotion or increment or any such pension, allowance or other benefit as is referred to in sub-section (1), which has not been confirmed or sanctioned by the State Bank under that sub-section, such officer or other employee shall be bound to refund such amount to the subsidiary bank concerned, and that bank shall be entitled to take all such steps as may be necessary for recovering such amount.

(3) Where any managing director, general manager or manager, deputy managing director or deputy general manager or other employee of an existing bank or the Saurashtra Bank has, after the 10th day of February, 1958, and before the appointed day, been paid any sum by way of compensation or gratuity, the subsidiary bank concerned shall be entitled to claim a refund of any sum so paid if the payment is not confirmed by the State Bank by a general or special order.

(4) Nothing in this section shall apply to, or in relation to, any officer or other employee of the Bank of Patiala, who does not become an officer or other employee of the State Bank of Patiala under the provisions of section 11.

50. Staff of a subsidiary bank.— (1) A subsidiary bank may, subject to such limitations and conditions as may be prescribed, appoint such number of officers, advisers and employees as it considers necessary or desirable, for the efficient performance of its functions and on such terms and conditions as it may deem fit.

(2) For the removal of doubts, it is hereby declared that the officers, advisers and employees of a subsidiary bank, in whatever capacity engaged, shall not be deemed to be officers, advisers or employees of the State Bank for any purpose, unless otherwise provided in the contract or agreement of service of any such officer, adviser or employee.

51. Establishment of pension and superannuation funds by subsidiary banks.— Notwithstanding anything to the contrary contained in any other law for the time being in force, a subsidiary bank may establish and maintain superannuation, pension, provident or other funds for the benefit of its officers or employees or the dependants of such officers or employees or for the purposes of the subsidiary bank, and grant superannuation allowances, annuities and pensions payable out of any such fund,

52. Obligation as to fidelity and secrecy.— (1) A subsidiary bank shall observe, except as otherwise required by law, the practices and usages customary among bankers, and in particular, it shall not divulge any information relating to, or to the affairs of, its constituents except in circumstances in which it is, in accordance with the law or practice and usage customary among bankers, necessary or appropriate for that bank to divulge such information.

(2) Every director, auditor, adviser, officer or other employee of a subsidiary bank shall, before entering upon his duties, make a declaration of fidelity and secrecy as in the form set out in the Second Schedule:

Provided that any declaration made under sub-section (2) of section 35 of the State Bank of Hyderabad Act shall be deemed to be declaration made to the Hyderabad Bank under this sub-section.

53. Indemnity of directors.—(1) Every director of a subsidiary bank shall be indemnified by that bank against all losses and expenses incurred by him in, or in relation to, the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director of a subsidiary bank shall not be responsible for any loss or expense caused to the bank by the insufficiency or deficiency of the value of, or title to, any property or security acquired or taken on behalf of the bank or by the insolvency or wrongful act of any customer or debtor or by anything done in, or in relation to, the execution of the duties of his office or otherwise than for his wilful act or default.

54. Defects in appointment or constitution not to invalidate acts or proceedings.— (1) No act or proceeding of the Board of Directors of a subsidiary bank shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(2) All acts done by any person acting in good faith as a director of a subsidiary bank shall, notwithstanding that he was disqualified to be a director or that there was any other defect in his appointment, be deemed to be valid.

55. Companies Act, 1956, and Banking Companies Act, 1949, not to apply to certain existing banks.— Subject to the provisions of this Act and unless the Central Government by notification in the Official Gazette, otherwise directs, on and from the appointed day, the provisions of the Companies Act, 1956, and the Banking Companies Act, 1949, shall not apply to an existing bank, in so far as the said provisions impose any obligation on, or require anything to be done by, any such bank.

56. Continuance of special provisions respecting recovery of loans and advances made by the Bank of Patiala and the State Bank of Saurashtra.— The State Bank of Patiala and the Saurashtra Bank shall be entitled to recover in the same manner as an arrear of land revenue any moneys due in respect of loans or advances made before the appointed day by the Bank of Patiala or the Saurashtra Bank, as the case may be, and the provisions of any law relating to such recovery as were applicable to that bank before the appointed day shall continue to apply to the State Bank of Patiala or the Saurashtra Bank, as the case may be, in respect of such recovery after the appointed day.

57. Bar to liquidation of a subsidiary bank.— No provision of law relating to the winding up of companies shall apply to a subsidiary bank nor shall it be placed in liquidation, save as provided in this Act or by order of the Central Government and in such manner as the Central Government may direct.

58. Dissolution of existing banks.— Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract or other instrument, an existing bank shall, on such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, stand dissolved.°

[°] Banks of Bikaner, Indore and Mysore and Travancore Bank dissolved w. e. f. 1-8-1966—See S.O., 88, Gaz. of Ind., 1966, Pt. II, S. 3 (ii), p. 96.

Section 56 — Note 1

(1) Scope of Section 56 is not limited to the mode of recovery of State dues already determined in respect of loans and advances made before 1st April 1960, but to their determination as well. Consequently, where the debts were determined by the Bank of Patiala before it became a statutory Corporation under Act XXXVIII of 1959, the new Corporation, namely. the State Bank of Patiala could not only recover those debts but also could add further amount to those debts by way of future interests. ILR (1966) 2 Punj 535.

(2) Section 56 protects not only the manner of recovery of the monies due to State Bank of Patiala as arrears of land revenue, but also preserves the law under which such recovery was being effected by the Bank of Patiala, which law, was Patiala Recovery of State Dues Act IV of 2002 Bk. which was later on repealed by Punjab Act XXXVII of 1960. But in spite of the repeal by Patiala Act the provisions of that Act continued to apply by virtue of Section 2 of Repealing Act to the recovery of any moneys due to the State Bank of Patiala in respect of loans and advances made before April 1, 1960, to the same extent as to the former Bank of Patiala in regard to the recovery of such dues as arrears of land revenue. ILR (1969) 2 Punj 72.

*[59. **Construction of references to existing banks.**— (1) For the purposes of sections 45, 49, 55, 58 and the First Schedule, the expression 'existing bank' shall include the Bank of Jaipur Limited.

(2) Except as otherwise provided in any general or special order made by the Central Government, any reference in any law, other than this Act, or in any contract or other instrument—

(a) to an existing bank, shall be construed as a reference to the corresponding new bank;

(b) to the Bank of Jaipur Limited, shall be construed as a reference to the State Bank of Bikaner.]

[*] Substituted for former S. 59 by Act 56 of 1962, S. 3 (ix) (1-1-1963).

60. Exercise of powers and functions on behalf of the Reserve Bank.— Any powers, duties or functions conferred, imposed or entrusted by this Act on, or to, the Reserve Bank, shall be exercised or performed by the Governor of the Reserve Bank or, in his absence, by a Deputy Governor nominated under sub-section (3) of section 7 of the Reserve Bank of India Act, 1934, or by such officer or officers of the Reserve Bank in respect of such matters and subject to such conditions and limitations as the Governor of the Reserve Bank may specify.

61. Protection of action taken under Act.— (1) No suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or the State Bank or any officer of the Central Government, the Reserve Bank or the State Bank for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act.

(2) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred or any damage caused by reason of the operation of, or anything done in pursuance of, the provisions contained in sections 46 and 47.

62. Power of Central Government to make rules.— (1) The Central Government may, by notification in the Official Gazette, make rules° to give effect to the provisions of this Act,

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the terms and conditions of service of the Chairman, members and staff of the Tribunal;

(b) the manner of, and the procedure for, payment of compensation (including allotment of shares in lieu of compensation) under this Act, including the requirements subject to which the payment shall be made;

(c) the determination of the persons to whom compensation shall be payable in all cases including cases where shares have been held by more than one person, or where they have been transferred before the appointed day, but the transfer has not been registered, or where the shareholder is dead;

(d) the circumstances under which claims for payment of the said compensation from persons claiming through or under a shareholder may be entertained;

(e) the requirements to be complied with before receipt of the said compensation by a shareholder, whose share certificate has been lost, destroyed, mutilated or stolen;

(f) the requirements subject to which information regarding the payment of the said compensation may be granted or refused and the conditions subject to which such information may be given.

(3) All rules made under this section shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made,

and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

[*] For the State Bank of India (Subsidiary Banks) (Compensation) Rules, 1959, see G.S.R., 1116, dated 1-10-1959 published in Gaz., of Ind., 1959, Pt. II-Sec. 3 (i), p. 1384.

63. Power of the State Bank to make regulations.— (1) The State Bank may, with the approval of the Reserve Bank, make in respect of a subsidiary bank regulations, not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the powers and duties of the general manager of the subsidiary bank;

(b) the fees and allowances which may be paid to directors or others for attending any meetings of the Board of Directors or of its committees (including the executive committee) or other committees or for attending to any other work of the subsidiary bank;

(c) the time and place at which, and the manner in which, the business of the Board of Directors of the subsidiary bank shall be transacted and the procedure to be followed at the meetings thereof;

(d) the constitution of the executive committee of the subsidiary bank and the conditions and limitations subject to which the executive committee may exercise its powers and the procedure to be followed at the meetings thereof;

(e) the formation of any other committees, whether of the Board of Directors of the subsidiary bank or otherwise, and the delegation of powers and functions of the Board to such committees and the conduct of business in such committees;

(f) the nature of shares of the subsidiary bank, the manner in which and the conditions subject to which, shares may be held and transferred and generally all matters relating to the rights and duties of shareholders;

(g) the maintenance of share register, and the particulars to be entered in such registers in addition to those specified in section 21, the inspection and closure of the registers and all other matters connected therewith;

(h) the holding and conduct of elections under this Act and the final determination of doubts or disputes regarding the qualifications of candidates for election or regarding the validity of elections;

(i) the manner in which general meeting shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(j) the manner in which notices may be served on behalf of the subsidiary bank upon shareholders or other persons;

(k) the payment of dividends, including interim dividends;

(l) the delegation of powers and functions of the Board of Directors of the subsidiary bank to the general manager or directors or officers or other employees of that bank;

(m) the conditions and limitations subject to which the subsidiary bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service;

(n) the duties and conduct of officers, advisers and other employees of the subsidiary bank;

(o) the establishment and maintenance of superannuation, pension, provident or other funds for the benefit of the officers or employees of the subsidiary bank or of the dependants of such officers or employees or for the purposes of the subsidiary bank, and the granting of super-

annuation allowances, annuities and pensions payable out of any such fund;

(p) the conduct and defence of legal proceedings by or against the subsidiary bank and the manner of signing pleadings;

(q) the provision of a seal for the subsidiary bank and the manner and effect of its use;

(r) the form and manner in which contracts binding on the subsidiary bank may be executed;

(s) the conditions and requirements subject to which loans or advances may be made or bills may be discounted or purchased by the subsidiary bank;

(t) the conditions subject to which loans or advances may be made by the subsidiary bank to its directors or officers or the relatives of such directors or officers or to companies, firms or individuals with which or with whom such directors or officers or relatives are connected as partners, directors, managers, servants, shareholders or otherwise;

(u) the persons or authorities who shall administer any pension, provident or other fund constituted for the benefit of the officers or employees of the subsidiary bank or their dependants or for the purposes of that bank;

(v) the circumstances in which the specific approval of the State Bank shall be required to the grant of loans and advances or investment of funds by the subsidiary bank or to any contract, arrangement or proposal entered into or proposed to be entered into by the subsidiary bank;

(w) the preparation and submission to the State Bank and the Reserve Bank of statements of programmes of activities and financial statements of the subsidiary bank and the periods for which, and the time within which, such statements and estimates are to be prepared and submitted;

(x) the person or persons in the State Bank by whom any powers, duties or functions conferred, imposed or entrusted on or to the State Bank under this Act may be exercised or performed;

(y) generally, for the efficient conduct of the affairs of the subsidiary bank.

(3) All regulations under this section, except the first regulations, shall be made in consultation with the Board of Directors of the subsidiary bank concerned.

64. Amendment of certain enactments.—[Repealed by Repealing and Amending Act, 1964 (52 of 1964), S. 2 and Sch. I (29-12-1964).]

65. Saving.— Nothing in this Act shall be deemed to affect the provisions of section 35 of the State Bank of India Act, 1955.

THE FIRST SCHEDULE

(See sections 13 and 14)

Principles of compensation

1. A. The compensation to be given by the State Bank shall, in the case of the Hyderabad Bank, the Bank of Patiala or the Saurashtra Bank, be an amount equal to the value of the assets of that bank as on the day immediately before the appointed day, computed in accordance with the provisions of Part I of this paragraph less the total amount of liabilities thereof computed in accordance with the provisions of Part II of this paragraph.

B. The total compensation to be given by the State Bank in respect of the transfer of the shares in the capital of the existing banks, other than the Bank of Patiala, to the persons (including any State Government) who, immediately before the appointed day, are registered as holders of shares in the books of each of these banks shall, in each case, be an amount equal to the value of the assets of that bank as on the day im-

mediately preceding the appointed day in relation to the corresponding new bank, computed in accordance with the provisions of Part I of this paragraph less the total amount of liabilities thereof computed in accordance with the provisions of Part II of this paragraph.

PART I—Assets

For the purposes of this paragraph, assets means the total of the following:—

(a) the amount of cash in hand and with the Reserve Bank and the State Bank (including foreign currency notes which shall be converted at the market rate of exchange);

(b) the amount of balances with any other bank, not being the Reserve Bank or the State Bank, whether on deposit or current account, and money at call and short notice, balances held outside India being converted at the market rate of exchange:

Provided that any balances which are not realisable in full shall be deemed to be debts and valued accordingly;

(c) the market value as on the appointed day of any securities, shares, debentures, bonds and other investments, held by the bank concerned;

Explanation.—For the purposes of this clause,—

(i) securities of the Central and State Governments (other than the securities specified in sub-clauses (ii) and (iii) of this Explanation) maturing for redemption within five years from the appointed day shall be valued at the face value or the market value whichever is higher;

(ii) securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Savings Scheme of the Central Government, shall be valued at their face value or the encashable value as on the appointed day, whichever is higher;

(iii) where the market value of any Government security such as the zamindari abolition bonds or other similar security in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors;

(iv) where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period;

(v) where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

(d) the amount of advances (including loans, cash credits, overdrafts, bills purchased and discounted), and other debts, whether secured or unsecured, to the extent to which they are reasonably considered recoverable, having regard to the value of the security, if any, the operations on the account, the reported worth and respectability of the borrower, the prospects of realisation and other relevant considerations;

(e) the market value of any land or buildings;

(f) the total amount of the premia paid, in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;

(g) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;

(h) the market or realisable value, as may be appropriate, of other assets appearing on the books of the bank, no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items.

PART II—LIABILITIES

For the purposes of this paragraph, "liabilities" means the total amount of all outside liabilities existing on the appointed day and all contingent liabilities which the subsidiary bank concerned may reasonably be expected to be required to meet out of its own resources on or after the appointed day.

Compensation payable to shareholders

2. Every shareholder of an existing bank other than the Bank of Patiala shall be given such amount as compensation as bears to the total compensation, in respect of each of the said banks calculated in accordance with the provisions of paragraph 1, the same proportion as the amount of the paid-up capital of the share held by the shareholder bears to the total paid-up capital of that bank.

Certain dividends not to be taken into account

3. No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the appointed day for which, in the ordinary course, profits would have been transferred or dividend declared after the appointed day.

THE SECOND SCHEDULE

(See section 52)

Declaration of fidelity and secrecy

I, ... do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as ..... (director, auditor, adviser, officer or employee, as the case may be) of the State Bank of .....° and which properly relate to the office or position held by me in, or in relation to the said Bank.

I further declare that I will not communicate, or allow to be communicated, to any person not legally entitled thereto any information relating to the affairs of the State Bank of .....* or to the affairs of any person having any dealing with the said bank nor will I allow any such person to inspect or have any access to any books or documents belonging to, or in the possession of, the State Bank of.....° and relating to the business of the said bank or to the business of any person having any dealing with the said Bank.

*Here enter the name of the subsidiary bank concerned.

THE THIRD SCHEDULE

(See section 64)

Amendments to certain enactments.—[Repealed by Act 52 of 1964, S. 2 & Sch. I (29-12-1964).]

Note:— Amendments made by the Schedule to the various Banking Laws have been incorporated in the respective Acts.

[THE] STATE FINANCIAL CORPORATIONS ACT, 1951
(ACT LXIII OF 1951)

[The text of the Act printed here is as on 31-8-1973.]

CONTENTS

CHAPTER I
PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II
INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT

3. Establishment of State Financial Corporations.

3A. Establishment of Joint Financial Corporations.
4 Share capital and shareholders.
5. Restrictions on transfer of shares.
6. Shares to be guaranteed by the State Government and to be trust or approved securities.
7. Additional capital of the Financial Corporation, and its borrowing powers.
8. Deposits with the Financial Corporation.
9. Management of Financial Corporations.
10. Board of directors.
11. Term of office and retirement of directors.
12. Disqualifications for being a director.
13. Removal of director from office.
14. Resignation of office by director and filling up of casual vacancies.
15. Chairman of the Board.
16. Remuneration of directors.
17. Managing director.
18. Executive Committee.
19. Meetings of the Board and Committee.
20. Powers of Executive Committee.
21. Advisory Committee.
22. Offices and agencies.
23. Officers and other employees of the Corporation.

CHAPTER III
POWERS AND DUTIES OF THE BOARD

24. General duty of the Board.
25. Business which Financial Corporations may transact.
26. Limit of accommodation.
27. Power to impose conditions for accommodation.
28. Prohibited business.
29. Rights of Financial Corporation in case of default.
30. Power to call for repayment before agreed period.
31. Special provisions for enforcement of claims by Financial Corporation.
32. Procedure of District Judge in respect of applications under Section 31.
32A. Power of Financial Corporation to appoint directors or administrators of an industrial concern when management is taken over.
32B. Effect of notified order under Section 32A.
32C. Powers and duties of directors and administrators.
32D. No right to compensation for termination of contract of managing agent, managing director, etc.
32E. Application of Act I of 1956.
32F. Restriction on filing of suits for dissolution etc., of an industrial concern not being a company when its management is taken over.

CHAPTER IV
INVESTMENT OF FUNDS, ACCOUNTS AND AUDIT

33. Funds of the Financial Corporation.
34. Investment of funds.
35. Disposal of profits.
35A. Special Reserve Fund.
36. General meetings.
37. Audit
37A. Inspection.
38. Returns.

CHAPTER V
MISCELLANEOUS

39. Power to give instructions to Financial Corporation on questions of policy.
40. Declaration of fidelity and secrecy.
41. Indemnity of directors.
41A. Protection of action taken by persons appointed under Section 27 or Section 32A.
42. Offences.
43. Provisions relating to income-tax and super-tax.
43A. Delegation of powers.
44. Act 18 of 1891 to apply to the books of the Financial Corporation.
45. Liquidation of Financial Corporation.
46. Power to apply Act to certain financial institutions in existence at commencement of Act.
46A. Extension of jurisdiction of the Financial Corporation to other States by agreement.
46B. Effect of Act on other laws.
47. Power of State Government to make rules.
48. Power of Board to make regulations.

THE SCHEDULE.

STATEMENT OF OBJECTS AND REASONS

"In order to provide medium and long-term credit to industrial undertakings, which falls outside the normal activities of commercial banks, a Central Industrial Finance Corporation was set up under the Industrial Finance Corporation Act, 1948 (XV of 1948). The State Governments wish that similar Corporations should also be set up in the States to supplement the work of the Industrial Finance Corporation. The intention is that the State Corporations will confine their activities to financing medium and small scale industries and will, as far as possible, consider only such cases as are outside the scope of the Industrial Finance Corporation. The State Governments also consider that the State Corporations should be established under a special Statute in order to make

it possible to incorporate in the constitution necessary provisions in regard to majority control by Government, guarantee by the State Government in regard to the repayment of principal, and payment of a minimum rate of dividend on the shares, restriction on distribution of profits and special powers for the enforcement of its claims and recovery of dues. Since the incorporation, regulation and winding up of such corporations fall within the purview of Parliament—vide Entry No. 43 of the Union List—the State Governments have requested the Government of India to enact the necessary enabling legislation, which is sought to be effected by this Bill.

2. The main features of the Bill are as follows:—

(i) The Bill provides that the State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State.

(ii) The share capital shall be fixed by the State Government but shall not exceed Rs. 2 crores. The issue of the shares to the public will be limited to 25 per cent. of the share capital and the rest will be held by the State Government, the Reserve Bank, scheduled banks, insurance companies, investment trusts, co-operative banks and other financial institutions.

(iii) Shares of the Corporation will be guaranteed by the State Government as to the repayment of principal and the payment of a minimum dividend to be prescribed in consultation with the Central Government.

(iv) The Corporation will be authorised to issue bonds and debentures for amounts which together with the contingent liabilities of the Corporation shall not exceed five times the amount of the paid-up share capital and the reserve fund of the Corporation. These bonds and debentures will be guaranteed as to the payment of the principal and the payment of interest at such rate as may be fixed by the State Government.

(v) The Corporation may accept deposits from the public repayable after not less than five years, subject to the maximum not exceeding the paid-up capital.

(vi) The Corporation will be managed by a Board consisting of a majority of Directors nominated by the State Government, the Reserve Bank and the Industrial Finance Corporation of India.

(vii) The Corporation will be authorized to make long-term loans to industrial concerns and to guarantee loans raised by industrial concerns which are repayable within a period not exceeding 25 years. The Corporation will be further authorised to underwrite the issue of stocks, shares, bonds or debentures by industrial concerns, subject to the provision that the Corporation will be required to dispose of any shares, etc., acquired by it in fulfilment of its underwriting liability within a period of 7 years.

(viii) Until a reserve fund is created equal to the paid-up share capital of the Corporation, and until the State Government has been repaid all amounts paid by them, if any, in fulfilment of the guarantee liability, the rate of dividend shall not exceed the rate guaranteed by the State Government. Under no circumstances shall the dividend exceed 5 per cent. per annum and surplus profits will be payable to the State Government.

(ix) The Corporation will have special privileges in the matter of enforcement of its claims against borrowers."—Gaz. Ind., 1950, Pt. II-Sec. 2, p. 561.

AMENDMENT ACT LVI OF 1956

STATEMENT OF OBJECTS AND REASONS

"The working of the State Financial Corporations Act, 1951, during the last few years brought to light certain difficulties. These were considered on official levels by the representatives of the State Financial Corporations and of the Reserve Bank of India in August 1954 and November 1955, and certain amendments to the Act were suggested as a result of these discussions.

2. Some of the States including Part C States are experiencing some difficulty in establishing separate financial corporations for their States. In order to remove such difficulty, it is proposed to make a provision which would enable a group of two or more States to establish, by agreement among themselves, a Joint Financial Corporation for

those States. It also seems desirable to provide for the extension of the jurisdiction of an existing financial corporation of a State to another State by agreement. As it is often difficult for the Central Government, a State Government or the Industrial Finance Corporation of India to transact business directly with an industrial concern in respect of loans or advances to be granted to it, it is proposed to empower the State Financial Corporations to undertake agency functions on their behalf. It is also proposed to amend section 25 of the Act, so that industrial concerns engaged in small scale and cottage industries, not having sufficient tangible assets, may avail themselves of the financial accommodation from State Financial Corporations.

3. When the management of an industrial concern is taken over by a State Financial Corporation under section 29 or section 32 of the Act, it is necessary to vest the Corporation with certain powers for the efficient management of the concern. It is proposed to insert in the Act new sections 32-A to 32-F for the purpose and these provisions follow closely those of the Industrial Finance Corporation Act, 1948. It seems desirable to provide for a machinery for the inspection of the working of State Financial Corporations. Accordingly, it is proposed to empower the Reserve Bank to make such inspection at the instance of the Central Government.

4. The Bill seeks to achieve these objects. Opportunity has also been taken to introduce in the Act some other amendments of a consequential or procedural nature keeping in view the amendments made from time to time in the Industrial Finance Corporation Act, 1948."—Gaz. Ind., 1956, Extra., Pt. II-Sec. 2, page 632.

AMENDING ACT VI OF 1962

The working of the State Financial Corporations Act, 1951, since 1956 when the Act was last amended has brought to light the need to amend it in certain respects. With the rising tempo of industrialisation of the country it has also become necessary to enlarge the field of operations of the State Financial Corporations to serve the growing needs of the country.

2. Under the existing provisions of the Act the State Financial Corporations cannot provide financial assistance to hotel or transport industry, nor can they help in the development of the industrial estates. It is proposed to amend the Act so as to enable the Corporations to render financial assistance for the hotel and transport industries and also in the development of the industrial estate.

3. To meet the growing needs of the industry for financial assistance it is necessary to augment their resources sufficiently. Consequently, the borrowing powers of the Corporations are proposed to be increased.

4. It is also proposed to amend the Act so as to enable a State Financial Corporation to transact the following kind of new business, namely, the guaranteeing of loan raised by the industrial concerns from the Scheduled Banks or State Co-operative Banks, and the guaranteeing of deferred payments due from any industrial concern in connection with its purchase of goods within India. Besides, the Corporations are also being enabled to retain underwritten shares beyond seven years and to convert Loans and debentures into share capital. It is further proposed to enhance the limit of accommodation in the case of public limited companies and co-operative societies to twenty lakhs of rupees.

5. The Bill seeks to achieve these objects. Opportunity is also being taken to incorporate some other amendments which are found necessary for the smooth working of the Corporations and are of a consequential, clarificatory and procedural nature. The Notes on clauses appended to the Bill explain the provisions thereof.—Gaz. of Ind., 2-12-1961, Pt. II, S. 2, Ext., p. 879.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XLVIII of 1952; XXVIII of 1955; LVI of 1956; LXII of 1956; VI of 1962.

—Extended by Regns. VI of 1963; VII of 1963; XI of 1963.

COGNATE ACTS AND PROVISIONS

1. Industrial Finance Corporation Act, XV of 1948.
2. International Finance Corporation Act, XLII of 1958.
3. Industrial Development Bank of India Act, XVII of 1964.

4. International Development Association (Status, Immunities and Privileges) Act, XXXII of 1960.

[THE] STATE FINANCIAL CORPORATIONS ACT, 1951 (ACT LXIII OF 1951)°

[31st October, 1951.]

An Act to provide for the establishment of State Financial Corporations.

Be it enacted by Parliament as follows:—

[°] For Statement of Objects and Reasons, see Gaz. of Ind., 1950, Pt. II, Sec. 2, p. 561 and for the Report of Select Committee, see Gaz. of Ind., 1951, Pt. II. Sec. 2, p. 543.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called THE STATE FINANCIAL CORPORATIONS ACT, 1951.

(2) It extends to the whole of India *[* * *].

(3) It shall come into force in any State on such date† as the Central Government may, by notification in the Official Gazette, appoint.

[*] The words "except the State of Jammu and Kashmir" were omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 (LXII of 1956), Section 2 and Sch. (1-11-1956).

[†] The Act came into force with effect from 1-8-1952 in all the States to which the Act then extended, see S.R.O. 1317 dated 28-7-1952, Gaz. of Ind., 1952, Pt. II, Sec. 3, page 1163.

It came into force in the State of Jammu and Kashmir with effect from 7-11-1959—See S.R.O. 2439 dated 29-10-1959, Gaz. of Ind., 1959, Pt. II, Sec. 3 (ii), p. 3073.

It was enforced in Goa, Daman and Diu, Union territory on 1-2-1964—See Goa Gaz., 13-2-1964, Sr. I, p. 43 (No. 7).

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of Directors of the Financial Corporation;

°[(b) "Financial Corporation" means a Financial Corporation established under section 3 and includes a Joint Financial Corporation established under section 3A;]

‡[(c) "industrial concern" means any concern engaged or to be engaged in the manufacture, preservation or processing of goods or in mining or in the hotel industry or in the transport of passengers or goods by road or by water or in the generation or distribution of electricity or any other form of power or in the development of any contiguous area of land as an industrial estate.

Explanation.—The expression "processing of goods" includes any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation;]

(d) "prescribed" means prescribed by rules or regulations made under this Act;

(e) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

(f) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934;

‡[(ff) "State co-operative bank" shall have the meaning assigned to it in clause (f) of section 2 of the Reserve Bank of India Act, 1934;

(fff) "State Government", in relation to a Union territory, means the Administrator thereof;]

Section 1 — Note 1

(1) Act is within the competence of the Parliament under Entries 43 and 45 of Sch. VII, List I of Constitution. **AIR 1973 Gauhati 136 (138).**

(g) "underwriting" means contract, with or without conditions, to subscribe for stocks, shares, bonds or debentures of an industrial concern with a view to the resale of the whole or any part thereof.

[°] Substituted for former clause (b) by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 2 (1-10-1956).

[†] Substituted for former clause (c), ibid, 1962 (VI of 1962), Section 2 (16-4-1962).

[‡] Substituted for former clause (ff), ibid.

CHAPTER II
INCORPORATION OF STATE FINANCIAL CORPORATIONS, THEIR CAPITAL AND MANAGEMENT

3. Establishment of State Financial Corporations.—(1) The State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification.

(2) The Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to *[acquire, hold and dispose of] property and shall by the said name sue and be sued.

[°] Substituted for the words "acquire and to hold", by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 3 (1-10-1956).

*[**3-A. Establishment of Joint Financial Corporations.**—(1) Notwithstanding anything contained in section 3, two or more States may, after consultation with the Reserve Bank enter into an agreement that there shall be one Financial Corporation for the group of States participating in the agreement and if the agreement is published in the Official Gazette of each of those States, the Central Government may, by notification in the Official Gazette, establish a Joint Financial Corporation to serve the needs of those States under such name as may be specified in the notification.

(2) An inter-State agreement under sub-section (1) among the participating States may—

(a) provide for the fixation of the authorised capital of the Joint Financial Corporation, the number of fully paid-up shares into which it shall be divided, and the allocation among the participating States of the shares to be distributed under clause (a) of sub-section (3) of section 4;

(b) provide for the sharing of the liability for the guarantee under section 6 or section 7 †[or section 8];

(c) provide for the number of directors to be nominated to the Board by each participating State Government;

(d) provide for the apportionment among the participating States of expenditure in connection with the Joint Financial Corporation;

(e) provide for the division among the participating States of the surplus profits payable by Joint Financial Corporation under sub-section (3) of section 35;

(f) determine which of the participating State Governments shall exercise the several functions of the State Government under this Act, and references in this Act to the State Government, in relation to the Joint Financial Corporation, shall, save as otherwise expressly provided, be construed accordingly;

(g) provide for consultation among the participating States either generally or with reference to particular matters arising under this Act;

(h) make such incidental and consequential provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) The Joint Financial Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property and shall, by the said name sue and be sued.

(4) Any reference in this Act to "State" in relation to a Joint Financial Corporation established for two or more States, shall be construed as a reference to each such State.]

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 4 (1-10-1956).

[†] Inserted by, ibid, 1962 (VI of 1962), S. 3 (16-4-1962).

4. Share capital and shareholders.—(1) The authorized capital of the Financial Corporation shall be such sum as may be fixed by the State Government in this behalf, but it shall in no case be less than fifty lakhs of rupees or exceed five crores of rupees.

(2) The authorized capital shall be divided into such number of fully paid-up shares as the State Government may determine and shall be issued to the parties mentioned in sub-section (3) at such times and in such manner as that Government may determine and each such share shall have the same face value.

(3) The State Government shall, with the approval of the Central Government, determine the number of shares which may, respectively, be distributed among—

(a) the State Government,

(b) the Reserve Bank,

(c) scheduled banks, insurance companies °[(including the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956)] investment trusts, co-operative banks or other financial institutions, and

(d) parties other than those referred to in clauses (a), (b) and (c):

Provided that the number of shares which may be allocated to the parties referred to in clause (d) shall in no case exceed twenty-five per cent. of the total number of shares.

(4) Subject to the other provisions contained in this section, the allocation of shares among the parties referred to in clauses (c) and (d) of sub-section (3) and the allotment of such shares shall be made by the Financial Corporation in such manner as may be prescribed.

(5) If any shares allocated to any of the parties referred to in clauses (c) and (d) of sub-section (3) remain unsubscribed, they shall be subscribed for by the State Government, but the State Government may at any time thereafter dispose of the shares so subscribed for to any party who was eligible to subscribe for it in the first instance.

[°] Inserted by the State Financial Corporations (Amendment) Act, 1962 (VI of 1962), Section 4 (16-4-1962).

5. Restrictions on transfer of shares.—(1) The shares of the Financial Corporation shall not be transferable except to the State Government, the Reserve Bank or any other financial institution *[or class of financial institutions] recognised in this behalf by the State Government:

Provided that the shares subscribed for by the parties referred to in clause (d) of sub-section (3) of section 4 shall be freely transferable.

(2) Nothing contained in this section shall affect the provisions of sub-section (5) of section 4.

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 5 (1-10-1956).

Note.—Shares subscribed for by the parties other than the State Government, the Reserve Bank, scheduled banks, insurance companies, investment trusts, co-operative banks or other financial institutions, are freely transferable.

6. Shares to be guaranteed by the State Government and to be trust or approved securities.—(1) The shares of the Financial Corporation shall be guaranteed by the State Government as to the repayment of principal and the payment of annual dividend at such minimum rate as the State Government may, with the approval of the Central Government, fix by notification published in the Official Gazette at the time of issuing the shares.

(2) Notwithstanding anything contained in the Acts hereinafter mentioned in this sub-section, the shares of the Corporation shall be deemed to be included among the securities enumerated in section 20 of the Indian Trusts Act, 1882 and also to be approved securities for the purposes of the Insurance Act, 1938 and the Banking Companies Act, 1949.

*[**7. Additional capital of the Financial Corporation and its borrowing powers.**—(1) The Financial Corporation may, in consultation with the Reserve Bank, issue and sell bonds and debentures carrying interest for the purpose of increasing its working capital and such bonds and debentures shall be guaranteed by the State Government as to the repayment of the principal and the payment, of interest at such rate as the State Government may, on the recommendation of the Board and with the approval of the Central Government, fix at the time the bonds and debentures are issued.

(2) The Financial Corporation may, for the purposes of carrying out its functions under this Act, borrow money from the Reserve Bank—

(a) repayable on demand or on the expiry of a fixed period not exceeding ninety days from the date on which the money is so borrowed against the security of—

(i) stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India, or

(ii) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Reserve Bank or as are fully guaranteed as to the repayment of the principal and payment of interest by a State Government;

(b) repayable on the expiry of a fixed period not exceeding eighteen months from the date on which the money is so borrowed, against securities of the Central Government or of any State Government of any maturity, or against bonds and debentures issued by the Financial Corporation and guaranteed by the State Government and maturing within a period not exceeding eighteen months from the date on which the money is so borrowed:

Provided that the amount borrowed by the Financial Corporation under clause (b) shall not at any time exceed in the aggregate sixty per cent. of the paid-up share capital thereof.

(3) The Financial Corporation may, for the purposes of carrying out its functions under this Act, borrow money from the State Government in consultation with the Reserve Bank on such terms and conditions as may be agreed upon.

(4) The Financial Corporation may, with the prior approval of the Reserve Bank, also borrow money from any financial institution notified† in this behalf by the Central Government on such terms and conditions as may be agreed upon.

(5) The total amount of bonds and debentures issued and outstanding, the amounts borrowed by the Financial Corporation under clause (b) of sub-section (2), sub-section (3) and sub-section (4) and of the contingent liabilities of the Financial Corporation in the form of guarantees given by it or underwriting agreements entered into by it shall not at any time exceed ten times the amount of the paid-up share capital and the reserve fund of the Financial Corporation.]

[*] Substituted for former section 7 by the State Financial Corporations (Amendment) Act, 1962 (VI of 1962), Section 5 (16-4-1962).

[†] Every scheduled bank, every State Co-operative Bank, has been so notified from which money can be borrowed with prior approval of the Reserve Bank—See Gaz. of Ind., 1-1-1966, Pt. II, Sec. 3 (ii) p. 10.

*[**8. Deposits with the Financial Corporation.**—(1) The Financial Corporation may accept from the State Government or, with the prior approval of the State Government and the Reserve Bank, a local authority or any other person deposits repayable after the expiry of a period which shall not be less than twelve

months from the date of the making of the deposit and on such other terms as it thinks fit:

Provided that the total amount of such deposits shall not at any time exceed the paid-up share capital of the Financial Corporation.

(2) All deposits accepted under sub-section (1), other than the deposits from the State Government, shall be guaranteed by the State Government as to the repayment of the principal and the payment of interest.]

[°] Substituted for former section 8 by Act VI of 1962, Section 5 (16-4-1962).

9. Management of Financial Corporations.—The general superintendence, direction and management of the affairs and business of the Financial Corporation shall vest in the Board of Directors which, with the assistance of an Executive Committee and a managing director may exercise all the powers and discharge all the functions which may be exercised or discharged by the Financial Corporation.

10. Board of Directors.—The Board of Directors shall consist of the following, namely:—

(a) three directors nominated by the State Government;

°[Provided that in the case of a Joint Financial Corporation, the number of directors shall be such as the State Governments of the participating States may, by agreement among themselves, think fit to nominate, each participating State Government nominating not more than two directors.]

(b) one director nominated by †[° * * *] the Reserve Bank;

(c) one director nominated by the Board of Directors of the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948;

(d) three directors elected in the prescribed manner ‡[* * *] by the parties referred to in clause (c) of sub-section (3) of section 4, one of whom shall be elected to represent scheduled banks, another to represent co-operative banks and the third to represent the remaining financial institutions;

(e) one director elected in the prescribed manner from among themselves by the parties referred to in clause (d) of sub-section (3) of section 4 who are shareholders of the Financial Corporation;

§[(f) a managing director appointed by the State Government in consultation with the Reserve Bank and, except in the case of the first appointment also with the Board;]

[°] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 7 (1-10-1956).

[†] The words "the Central Board of" omitted by ibid, 1962 (VI of 1962), Section 6 (16-4-1962).

[‡] The words "from among themselves" were omitted by ibid, 1956, S. 7 (1-10-1956).

[§] Substituted for former clause (f), ibid, 1962 (VI of 1962), Section 6 (16-4-1962).

11. Term of office and retirement of directors.—(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) An elected director other than a director deemed to be elected under the first proviso to section 10 shall hold office for four years:

Section 10 — Note 1

(1) The person nominated by State Government to the office of a director of the W. B. Financial Corporation holds the office at the pleasure of that Government and is disqualified for the election to the Parliament. (1963) 67 Cal WN 558 (569).

(2) In the scheme under Section 10 (e), the reference to a director is to an individual and not to a body corporate. AIR 1972 Orissa 217 (219) = (1972) 1 Cut WR 625 (DB).

Provided that two out of the four directors so elected shall retire at the end of two years after the first election and the other two at the end of four years after such election, the directors so to retire being determined by lot.

(3) Notwithstanding anything contained in sub-section (2), an elected director shall continue in office until his successor is elected and shall also be eligible for re-election for not more than two full consecutive terms after the rotation of elected directors has begun.

12. Disqualifications for being a director.—No person shall be a director who—

(a) except in the case of a managing director, is a salaried official of the Financial Corporation; or

(b) is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or

(c) is found to be a lunatic or becomes of unsound mind; or

(d) is or has been convicted of any offence involving moral turpitude.

13. Removal of director from office.—The State Government may remove from office any director who—

(a) is, or has become, subject to any of the disqualifications mentioned in section 12; or

(b) without excuse sufficient in the opinion of the State Government to exonerate him is absent without leave of the Board from more than three consecutive meetings of the Board.

14. Resignation of office by director and filling up of casual vacancies.—(1) The managing director or any other director may resign his office by giving notice thereof in writing to the State Government, and, on such resignation being accepted, shall be deemed to have vacated his office.

*[(1A) If the managing director is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the State Government may, after consultation with the Board, appoint another person to act in his place during his absence.]

(2) A casual vacancy in the office of an elected director shall be filled by election and a director so elected shall hold office for the unexpired portion of the term of his predecessor.

(3) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 8 (1-10-1956).

15. Chairman of the Board.—(1) The Chairman of the Board shall be one of the directors, not being the managing director, nominated by the State Government, after considering, except in the case of the nomination of the first Chairman, the recommendation of the Board:

Provided that the nomination of the Chairman for any period other than the first period shall be made only after the vacancies in the office of directors occurring by efflux of time in that period have been filled by nomination or election, as the case may be.

(2) The Chairman shall hold office for two years or until his successor is nominated:

Provided that a Chairman shall, so long as he remains a director, be eligible for renomination as Chairman.

*[**16. Remuneration of directors.**—The directors other than the managing director and not being servants of the Government shall be paid such fees as may be prescribed for attending meetings of the Board and, if they are members of

the Executive Committee, or any other committee appointed by the Financial Corporation, for attending meetings of such committee.]

[*] Substituted for former S. 16 by the State Financial Corporations (Amendment) 1962 (VI of 1962), S. 7 (16-4-1962).

17. Managing director.—*[(1)] The managing director shall—

(a) be a wholetime officer of the Financial Corporation;

(b) perform such duties as the Board may, by regulations, entrust or delegate to him;

†[(c) hold office for such term not exceeding four years as the State Government may specify and be eligible for reappointment;]

(d) receive such salary and allowances as the Board, with the previous approval of the State Government may determine.

Provided that the first managing director ‡[* * *] shall receive such salary and allowances as the State Government may fix.

§[(2) The State Government may, after consulting the Board, remove the managing director from office:

Provided that no managing director shall be so removed unless he has been given an opportunity of showing cause against his removal.]

[*] Section 17 was renumbered as sub-section (1) thereof by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 9 (1-10-1956).

[†] Substituted for former clause (c), ibid, 1962 (VI of 1962), Section 8 (16-4-1962).

[‡] Words "shall hold office for such term and" omitted, ibid.

[§] Inserted by ibid, 1956 (56 of 1956), Section 9 (1-10-1956).

18. Executive committee.—(1) The Executive Committee shall consist of the managing director who shall be the Chairman of the Committee, and *[the following] other directors, chosen as follows:—

(a) two directors elected by the nominated directors, one from among the directors nominated by the State Government, and one from among the directors nominated by the Reserve Bank and the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948:

†[Provided that in the case of a Joint Financial Corporation, in addition to the one director elected from among the directors nominated by the Reserve Bank and the Industrial Finance Corporation of India, as many directors as there are participating States shall be elected by the nominated directors, one each from among the directors nominated by each of the participating State Governments;]

(b) one director elected by the elected directors.

(2) A director elected to be a member of the Executive Committee shall hold office as such for the rest of his term of office as director.

[*] Substituted for the word "three" by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 10 (1-10-1956).

[†] Inserted, Ibid.

19. Meetings of the Board and Committee.—(1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members present, and, in the case of equality of votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) No director shall vote on any matter in which he is interested,

*[(3A) If, for any reason, a director nominated under clause (a) or clause (b) or clause (c) of section 10 is unable to attend any meeting of the Board, the State Government, †[the Reserve Bank or the Industrial Finance Corporation of India,

established under the Industrial Finance Corporation of India Act, 1948] as the case may be, may depute any other person to attend the said meeting and such person shall, for all purposes of the said meeting, be deemed to be a director nominated under clause (a) or clause (b) or clause (c), as the case may be, of the said section.]

‡[(4) If for any reason a director nominated under clause (a) or clause (b) or clause (c) of section 10 who is a member of the Executive Committee or any other committee is unable to attend any meeting of the Executive Committee or other committee, the State Government, the Reserve Bank or the Industrial Finance Corporation established under the Industrial Finance Corporation Act, 1948, as the case may be, may depute any other person to attend the said meeting and such person shall, for the purposes of the said meeting be deemed to be a member of such committee.

(5) If for any reason the Chairman of the Board or the Chairman of the Executive Committee is unable to attend any meeting of the Board or, as the case may be, of the Executive Committee,—

(a) in the case of the meeting of the Board, a director, not being the managing director, authorised by the Chairman of the Board in writing shall preside at such meeting, but if the director so authorised is absent or if no such authorisation has been made, the Board may elect a director to preside at that meeting; and

(b) in the case of the meeting of the Executive Committee, a member authorised in writing by the Chairman of that Committee shall preside at that meeting, but if the member so authorised is absent or if no such authorisation has been made, the Committee may elect any of its members to preside at that meeting.]

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 11 (1-10-1956).

[†] Substituted for certain words, ibid, 1962 (VI of 1962), Section 9 (16-4-1962).

[‡] Substituted for former clause (4), ibid.

20. Powers of Executive Committee.— (1) Subject to such general or special directions as the Board may from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(2) The minutes of every meeting of the Executive Committee shall be laid before the Board at the next following meeting of the Board.

21. Advisory Committee.—The Financial Corporation may appoint one or more advisory committee or committees for the purpose of assisting the Financial Corporation in the efficient discharge of its functions and, in particular, for the purpose of securing that those functions are exercised with due regard to the circumstances and conditions prevailing in, and the requirements of, particular areas or industries.

22. Offices and agencies.— The Financial Corporation shall establish its head office at such place in the State as the State Government may specify and may, with the previous sanction of the State Government, establish offices or agencies in any other place in the State.

Note.— In the case of a Joint Financial Corporation for a group of States, the head office of the Corporation will be by agreement as between the group-States in one of the States. See S. 3A (4) supra.

23. Officers and other employees of the Corporation.— The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.

CHAPTER III
POWERS AND DUTIES OF THE BOARD

24. General duty of the Board.— The Board in discharging its functions under this Act shall act on business principles, due regard being had by it to the interests of industry, commerce and the general public.

*[**25. Business which Financial Corporation may transact.—** (1) The Financial Corporation may, subject to the provisions of this Act, carry on and transact any of the following kinds of business, namely:—

(a) guaranteeing, on such terms and conditions as may be agreed upon,—
  (i) loans raised by industrial concerns which are repayable within a period not exceeding twenty years, and are floated in the public market;
  (ii) loans raised by industrial concerns from scheduled banks or State co-operative banks;
(b) guaranteeing, on such terms and conditions as may be agreed upon, deferred payments due from any industrial concern in connection with its purchase of capital goods within India;
(c) underwriting of the issue of stock, shares, bonds or debentures by industrial concerns;
(d) acting as agent of the Central Government or the State Government or the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948, or any other financial institution notified in this behalf by the Central Government in the transaction of any business with an industrial concern in respect of loans or advances granted, or debentures subscribed, by any one of them;
(e) receiving in consideration of the services mentioned in the preceding clauses such commission as may be agreed upon;
(f) retaining as part of its assets any stock, shares, bonds or debentures of an industrial concern which it may have to take in fulfilment of its underwriting liabilities, so however, that it disposes of the stock, shares, bonds or debentures so acquired as early as practicable, but in no case the stock, shares, bonds or debentures so acquired shall be retained beyond a period of seven years from the date of such acquisition, except with the prior permission of the Reserve Bank:

Provided that the Financial Corporation may subscribe to stock or shares of the industrial concern if such concern increases its subscribed capital by the issue of further stock or shares in accordance with, and subject to the provisions of section 81 of the Companies Act, 1956, but the stock or shares so subscribed shall not be retained after the stock or shares of the industrial concern taken in fulfilment of its underwriting liabilities are disposed of;

(g) granting loans or advances to, or subscribing to debentures of, an industrial concern, repayable within a period not exceeding twenty years from the date on which they are granted or subscribed to, as the case may be:

Provided that nothing contained in this clause shall be deemed to preclude the Financial Corporation from granting loans or advances to, or subscribing to

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Section 25 — Note 1

(1) Assessee, a public undertaking set up under State Financial Corporations Act to help industrial concerns inter alia, by advancing loans — Assessee investing surplus funds in Government securities — Some of such securities prices of which were likely to go down and which were fetching low interest chosen for sale to meet sanctioned loans — Loss in such sale claimed by assessee as trading loss — **Held** the assessee could not be held to be doing banking business as commonly understood — It could at best be regarded as doing business analogous to that of banker in some particulars — However, this was immaterial in finding out whether the loss was capital loss or trade loss — Thus the sale was closely linked up with the business of the assessee and the loss suffered in such sale was trading loss and not capital loss. (1966) 2 ITJ 782 = ILR (1966) 16 Raj 1157 (DB).

debentures of, an industrial concern to which may be attached an option to convert such debentures or loans into stock or shares of the industrial concerns:

Provided further that the Financial Corporation may, in the exercise of such option, convert such debentures or loans into stock or shares of the industrial concern and may also subscribe to stock or shares of the industrial concern if such concern increases its subscribed capital by the issue of further stock or shares in accordance with, and subject to, the provisions of section 81 of the Companies Act, 1956;

(h) generally, the doing of such acts and things as may be incidental to, or consequential upon, the exercise of its powers or the discharge of its duties under this Act.

(2) No accommodation shall be given under clauses (a), (b) and (g) of sub-section (1) unless it is sufficiently secured by a pledge, mortgage, hypothecation, or assignment of Government or other securities, stock, shares, or secured debentures, bullion, movable or immovable property or other tangible assets in the manner prescribed by regulations or unless it is guaranteed as to the repayment of the principal and the payment of interest by the State Government, a scheduled bank or a State co-operative bank.

(3) Subject to the provisions of sub-section (5) of section 7, the aggregate of contingent liabilities of the Financial Corporation under clauses (a), (b) and (c) of sub-section (1) shall not at any time exceed twice the paid-up share capital and reserve fund of the Corporation except with the prior approval of the State Government and in consultation with the Reserve Bank but in no case shall exceed thrice the paid-up share capital and reserve fund of the Corporation.]

[°] Substituted for former S. 25 by the State Financial Corporations (Amendment) Act, 1962 (6 of 1962), S. 10 (16-4-1962).

*[26. **Limit of accommodation.**— The Financial Corporation shall not enter into any arrangements under clauses (a) and (g) of sub-section (1) of section 25 with any industrial concern so that the total amount outstanding against that concern in respect of all such arrangements is more than—

(i) twenty lakhs of rupees in the case of a public limited company as defined in section 3 of the Companies Act, 1956 or a co-operative society registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force; and

(ii) ten lakhs of rupees in any other case.]

[*] Substituted for former S. 26 by the State Financial Corporations (Amendment) Act, 1962 (6 of 1962), S. 11 (16-4-1962).

27. **Power to impose conditions for accommodation.**— (1) In entering into any arrangement under section 25 with an industrial concern, the Financial Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Financial Corporation and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where one of the conditions imposed under sub-section (1) is that a director shall be appointed by the Financial Corporation on the board of directors of the industrial concern to protect the interests of the Financial Corporation, such condition shall be a valid condition notwithstanding anything contained in the *[Companies Act, 1956], or in any other law for the time being in force or in any instrument relating to the industrial concern; †[and nothing in the said Act or any such law or instrument shall, in so far as it makes in relation to a director, any provision for the holding of any share qualification, age limit, restriction on the number of directorships, retirement by rotation or removal from office, apply to any director appointed by the Financial Corporation in pursuance of this section.]

[°] Substituted for "Indian Companies Act, 1913", by the State Financial Corporations (Amendment) Act, 1956 (56 of 1956), S. 13 (1-10-1956).

[†] Inserted, ibid 1962 (6 of 1962), S. 13 (16-4-1962).

28. Prohibited business.— The Financial Corporation shall not—

*[(a) except as provided in section 8, accept deposits;

(b) except as provided in clauses (f) and (g) of sub-section (1) of section 25, subscribe to the shares or stock of any company;]

(c) grant any loan or advance on the security of its own shares.

[*] Substituted for former clauses (a) and (b) by Act 6 of 1962, S. 13 (16-4-1962).

29. Rights of Financial Corporation in case of default.— (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management of the industrial concern, as well as the *[right to transfer by way of lease or sale] and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers †[* *] under sub-section (1), shall vest in the transferee all rights in or to the property transferred ‡[as if the transfer] had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

§[(4) Where the management of an industrial concern is taken over by the Financial Corporation or any property is transferred and realised by it under the provisions of sub-section (1), all costs, *†[charges and expenses which in the opinion of the Financial Corporation have been properly incurred] by it as incidental to such management, or transfer and realisation shall be recoverable from the industrial concern and the money which is received by it from such management or transfer and realisation shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so received shall be paid to the person entitled thereto.]

(5) Where the Financial Corporation takes over the management of an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits by or against the concern, and shall sue and be sued in the name of *‡[the concern.]

[*] Substituted for "right to sell" by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), S. 14 (1-10-1956).

[†] The words "of sale and realisation" were omitted, Ibid.

[‡] Substituted for "as if the sale", ibid.

[§] Substituted for former sub-section (4), Ibid.

[*†] Substituted for "charges and expenses properly incurred" by Act 6 of 1962, Section 14 (16-4-1962).

[*‡] Substituted for "the owner of the concern", ibid.

30. Power to call for repayment before agreed period.— Notwithstanding anything in any agreement to the contrary, the Financial Corporation may, by notice in writing, require any industrial concern to which it has granted any loan or advance to discharge forthwith in full its liabilities to the Financial Corporation,—

(a) if it appears to the Board that false or misleading information in any material particular was given by the industrial concern in its application for the loan or advance; or

(b) if the industrial concern has failed to comply with the terms of its contract with the Financial Corporation in the matter of the loan or advance; or

(c) if there is reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect thereof; or

(d) if the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance is not insured and kept insured by the industrial concern to the satisfaction of the Financial Corporation or depreciates in value to such an extent that, in the opinion of the Board, further security to the satisfaction of the Board should be given and such security is not given; or

(e) if, without the permission of the Board, any machinery, plant or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced; or

(f) if for any reason it is necessary to protect the interests of the Financial Corporation.

31. Special provisions for enforcement of claims by Financial Corporation.— (1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance under section 30 and the industrial concern fails to make such repayment, *[then, without prejudice to the provisions of section 29 of this Act and of section 69 of the Transfer of Property Act, 1882] any officer of the Financial Corporation, generally or specially authorized by the Board in this behalf, may apply to the District Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:—

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the †[Financial Corporation] as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed.

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), S. 15 (1-10-1956).

[†] Substituted for "Corporation", Ibid.

Section 31 — Note 1

(1) Section 31 refers to the word 'claim' stating "special provisions for enforcement of claims by Financial Corporation" that is, the sum total of the facts alleged by the Corporation with demand for a relief under any of the 3 clauses of Section 31 (1). 1973 MPLJ 150 (153, 154) = 1973 Jab LJ 209 (DB).

(2) Application under Section 31 by Financial Corporation for action under Clause (a) of Section 31 — Creditors of industrial concern are not necessary parties — Civil P. C. (1908). Order 34, R. 4, has no application. AIR 1963 Punj 555 (556) = ILR (1963) 1 Punj 840.

(3) The claim for enhanced rate of interest at 11 per cent from the date of default in repayment of loan to the Punjab Financial Corporation, **Held** was part of primary contract and was not penal or unreasonable. AIR 1973 Punj 38 (39) = 74 Punj LR 967.

(4) Determination of rights under an agreement — It is to be as on the date of the application. AIR 1973 Cal 268 (276).

32. Procedure of District Judge in respect of applications under section 31.— (1) When the application is for the reliefs mentioned in clauses (a) and (c) of sub-section (1) of section 31, the District Judge shall pass an ad interim order attaching the security, or so much of the property of the industrial concern as would on being sold realise in his estimate an amount equivalent in value to the outstanding liability of the industrial concern to the Financial Corporation, together with the costs of the proceedings taken under section 31, with or without an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment.

(2) When the application is for the relief mentioned in clause (b) of sub-section (1) of section 31, the District Judge shall grant an ad interim injunction restraining the industrial concern from transferring or removing its machinery, plant or equipment and issue a notice calling upon the industrial concern to show cause, on a date to be specified in the notice, why the management of the industrial concern should not be transferred to the Financial Corporation.

(3) Before passing any order under sub-section (1) or sub-section (2), the District Judge may, if he thinks fit, examine the officer making the application.

(4) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him calling upon it to show cause on a date to be specified in the notice why the ad interim order of attachment should not be made absolute or the injunction confirmed.

(5) If no cause is shown on or before the date specified in the notice under sub-sections (2) and (4), the District Judge shall forthwith make the ad interim

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Section 32 — Note 1

(1) Jurisdiction conferred on District Judge under Act is not as persona designata. **AIR 1972 SC 801 (803) = (1972) 1 SCR 351.**

(2) Determination of rights under an agreement — It is to be as on the date of application. AIR 1973 Cal 268 (276).

(3) Words "in the absence of such court" mean in the absence of a city Civil Court having jurisdiction in the matter. AIR 1973 Cal 268 (276).

(4) To the order of District Judge setting aside or refusing to set aside sale, the provisions of Civil P. C. namely Order 43 R. 1 (j) dealing with appeals are applicable. **AIR 1972 SC 801 (803) = (1972) 1 SCR 351.**

(5) Under Section 32 ad interim Receiver cannot be appointed but only ad interim attachment and ad interim order of injunction could be passed. AIR 1973 Cal 268 (277). (AIR 1942 Mad 396, **Dissented from.**)

(6) Notice wrongly issued to show cause why ad interim order appointing a receiver be not made absolute — Court can, without issuing any further notice treat it as notice for attachment as contemplated by Sec. 32 (4) if it finds that the amount of claim is admitted and loan could not be repaid and prayers in petition are also in conformity with Sections 31 and 32. AIR 1973 Cal 268 (277, 278).

(7) Where on application under Section 31 the Court granted ad interim injunction and attached properties and while upholding claim dismissed application on ground that the Act was ultra vires the order comes under Section 32 (7) (c) and (d) and is appealable under Section 32 (9). AIR 1973 Delhi 28 (31).

(8) Section 32 incorporates a provision at par with Order 21 Rule 64 of Civil P. C. and an order of District Judge under Section 32 (5) and/or Section 35 (7) is appealable. **ILR (1972) Cut 1017 (1024).**

(9) The word 'claim' in Section 32 (6) does not mean only the monetary claim. It means the sum total of the facts alleged by the Corporation with demand for relief under any of the three clauses of Section 31 (1). Where the Corporation applied for sale of mortgaged property on debtor's committing default the explanation by the latter justifying the default and asking for instalments can be investigated into by the District Judge. 1973 MPLJ 150 (153, 154) = 1973 Jab LJ 209 (DB).

(10) The provisions of Section 32 (5), (7) and (8) of the State Financial Corporations Act are identical with the provisions of Section 30 (7), (9) and (10) of the Industrial Finance Corporation Act of 1948 and the principle that the Court directing sale under Section 30 (7) or (9) can, without an application for execution, in the same order or by a separate order give directions for carrying that order into effect in accordance with the provisions of Civil P. C. as required by Section 30 (10) will equally apply to the provisions of Section 32 (5) or (7). AIR 1972 Pat 348 (353) = 1972 Pat LJR 377 = 1972 BLJR 682.

(11) Application under Sec. 31 by Financial Corporation for action under Clause (a) of Section 31 — Creditors of Industrial concern are not necessary parties — Civil P. C. (1908), Order 34. Rule 4, has no application. AIR 1963 Punj 555 (556) = ILR (1963) 1 Punj 840.

(12) Order of District Judge — Not a decree — Appeal will lie only under Section 32 (9) — Provisions of Order 9, R. 13 or of Order 43, Rule 1 (d), Civil P. C. not applicable. (1970) 72 Punj LR 491.

order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Financial Corporation or confirm the injunction.

(6) If cause is shown, the District Judge shall proceed to investigate the claim of the Financial Corporation in accordance with the provisions contained in the Code of Civil Procedure, 1908, in so far as such provisions may be applied thereto.

(7) After making an investigation under sub-section (6), the District Judge may—

(a) confirm the order of attachment and direct the sale of the attached property;

(b) vary the order of attachment so as to release a portion of the property from attachment and direct the sale of the remainder of the attached property;

(c) release the property from attachment;

(d) confirm or dissolve the injunction; or

(e) transfer the management of the industrial concern to the Financial Corporation or reject the claim made in this behalf:

Provided that when making an order under clause (c), the District Judge may make such further orders as he thinks necessary to protect the interests of the Financial Corporation and may apportion the costs of the proceedings in such manner as he thinks fit:

Provided further that unless the Financial Corporation intimates to the District Judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to, until the expiry of the period fixed under sub-section (9) within which an appeal may be preferred or, if an appeal is preferred, unless the High Court otherwise directs until the appeal is disposed of.

(8) An order of attachment or sale of property under this section shall be carried into effect as far as practicable in the manner provided in the Code of Civil Procedure, 1908 for the attachment or sale of property in execution of a decree as if the Financial Corporation were the decree-holder.

*[(8A) An order under this section transferring the management of an industrial concern to the Financial Corporation shall be carried into effect, as far as may be practicable, in the manner provided in the Code of Civil Procedure, 1908, for the possession of immovable property or the delivery of movable property in execution of a decree, as if the Financial Corporation were the decree-holder.]

(9) Any party aggrieved by an order under sub-section (5) or sub-section (7) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal the High Court may, after hearing the parties, pass such orders thereon as it thinks proper.

(10) Where proceedings for liquidation in respect of an industrial concern have commenced before an application is made under sub-section (1) of sec, 31, nothing in this section shall be construed as giving to the Financial Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

†[(11) The functions of a district judge under this section shall be exercisable—

(a) in a presidency town, where there is a city civil court having jurisdiction, by a judge of that court and in the absence of such court, by the High Court; and

(b) elsewhere, also by an additional district judge.]

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), S. 16 (1-10-1956).

[†] Substituted, ibid, 1962 (6 of 1962), S. 15 (16-4-1962).

*[32A. **Power of Financial Corporation to appoint directors or administrators of an industrial concern when management is taken over.**— (1) When the

management of an industrial concern is taken over by the Financial Corporation, the Financial Corporation may, by order notified in the Official Gazette, appoint as many persons as it thinks fit,—

(a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956, to be directors of that industrial concern; or

(b) in any other case, to be administrators of that industrial concern.

(2) The power to appoint directors or administrators under this section includes the power to appoint any individual, firm or company to be the managing agent or manager of the industrial concern on such terms and conditions as the Financial Corporation may think fit.]

†[(3) Nothing in the Companies Act, 1956 or in any other law for the time being in force or in any instrument relating to the industrial concern shall, in so far as it makes in relation to a director, any provision for the holding of any share qualification, age limit, restriction in the number of directorships, retirement by rotation or removal from office, apply to any director appointed by the Financial Corporation under this section.]

[*] New sections 32A, 32B, 32C, 32D, 32E and 32F were inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), S. 17 (1-10-1956).

[†] Inserted by ibid, 1962 (VI of 1962), S. 16 (16-4-1962)

*[**32B. Effect of notified order under section 32A.**— On the issue of a notified order under section 32A,—

(a) in any case in which the industrial concern is a company as defined in the Companies Act, 1956, all persons holding office as directors of the industrial concern and in any other case, all persons holding any office having the powers of superintendence, direction and control of the industrial concern, immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;

(b) any contract of management between the industrial concern and any managing agent or any director or manager thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;

(c) in the case of an industrial concern which is a company as defined in the Companies Act, 1956, the managing agent, if any appointed under section 32A shall be deemed to have been duly appointed in pursuance of the said Act and the memorandum and articles of association of the industrial concern and the provisions of the said Act and the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Financial Corporation;

(d) the directors or the administrators appointed under section 32A shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the industrial concern is, or appears to be, entitled, and all the property and effects of the industrial concern shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the notified order;

(e) the directors appointed under section 32A shall, for all purposes, be the directors of the industrial concern duly constituted under the Companies Act, 1956, and such directors, or as the case may be, the administrators appointed under section 32A, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the industrial concern, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial concern or from any other source whatsoever.]

[°] See Foot-note [°] under S. 32A.

°[32C. **Powers and duties of directors and administrators.**—(1) Subject to the control of the Financial Corporation, the directors, or as the case may be, the administrators appointed under section 32A, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial concern and shall exercise such powers and have such duties as may be prescribed.

(2) Without prejudice to the generality of the powers vested in them under sub-section (1), the directors or as the case may be, the administrators appointed under section 32A, may, with the previous approval of the Financial Corporation make an application to a Court for the purpose of cancelling or varying any contract or agreement entered into at any time before the issue of the notified order under section 32A, between the industrial concern and any other person and the Court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial concern, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement and the contract or agreement shall have effect accordingly.]

[°] See Foot-note [°] under S. 32A.

°[32D. **No right to compensation for termination of contract of managing agent, managing director, etc.**— (1) Notwithstanding anything to the contrary contained in any contract or in any law for the time being in force, no managing agent, managing director or any other director or a manager or any person in charge of management of an industrial concern shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with such concern.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing agent or managing director, or any other director or manager or any such person in charge of management to recover from the industrial concern, moneys recoverable otherwise than by way of such compensation.]

[°] See Foot-note [°] under S. 32A.

°[32E. **Application of Act I of 1956.**— (1) Where the management of an industrial concern, being a company as defined in the Companies Act, 1956, is taken over by the Financial Corporation, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such concern,—

(a) it shall not be lawful for the shareholders of such concern or any other person to nominate or appoint any persons to be a director of the concern;

(b) no resolution passed at any meeting of the shareholders of such concern shall be given effect to unless approved by the Financial Corporation;

(c) no proceeding for the winding up of such concern or for the appointment of receiver in respect thereof shall lie in any Court, except with the consent of the Financial Corporation.

(2) Subject to the provisions contained in sub-section (1) and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government in consultation with the State Government may, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956, shall continue to apply to such concern in the same manner as it applied thereto before the issue of the notified order under section 32A.]

[°] See Foot-note [°] under S. 32A.

°[32F. **Restriction on filing of suits for dissolution, etc., of an industrial concern not being a company when its management is taken over.**— (1) Where the management of an industrial concern not being a company as defined in the Companies Act, 1956, is taken over by the Financial Corporation, no suit or proceedings for dissolution or for partition shall, in so far as it relates to that industrial concern, lie in any Court or before any tribunal or other authority except with the consent of the Financial Corporation.

(2) No proceeding for the appointment of any official assignee or receiver in relation to any industrial concern the management of which has been taken over by the Financial Corporation shall lie in any Court except with consent of the Financial Corporation.]

[*] See Foot-note [*] under S. 32A.

CHAPTER IV
INVESTMENT OF FUNDS, ACCOUNTS AND AUDIT

33. Funds of the Financial Corporation.— (1) Every Financial Corporation shall have its own fund, and all receipts of the Financial Corporation shall be carried thereto and all payments by the Corporation shall be made therefrom.

(2) All moneys belonging to the fund shall be deposited in the Reserve Bank *or the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks Act, 1959) †[or, in consultation with the Reserve Bank, in a scheduled bank or a State co-operative bank.]

[*] Substituted for the words "or with any agency of the Reserve Bank other than a Government treasury" by Act 6 of 1962, S. 17 (16-4-1962).

[†] Substituted for the words "or in a scheduled bank in consultation with the Reserve Bank" by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), S. 18 (1-10-1956).

34. Investment of funds.— The Financial Corporation may invest its funds in the securities of the Central Government or of any State Government.

35. Disposal of profits.— (1) The Financial Corporation shall establish a reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by banking companies, the Financial Corporation may out of its net annual profits declare a dividend:

Provided that for so long as the reserve fund is less than the paid-up share capital of the Financial Corporation and until there has been repaid to the State Government such sum, if any, as that Government may have paid under guarantee given in pursuance of section 6 or *[section 7 or section 8] the rate of such dividend shall not exceed the rate guaranteed by the State Government under section 6.

(3) Notwithstanding anything contained in this section, no dividend paid under this section shall under any circumstances exceed the rate of five per cent. per annum and if, in respect of any financial year after the reserve fund becomes equal to the share capital of the Financial Corporation, there is a surplus in the net profits after declaring a dividend at the rate specified in this sub-section, such surplus shall be paid to the State Government.

[*] Substituted for the words "under any guarantee given in pursuance of sub-section (2) of section 7", by Act 6 of 1962, S. 18 (16-4-1962).

*[**35A. Special reserve fund.—** (1) The Financial Corporation may establish a special reserve fund, to which shall be transferred such portion of the dividends accruing to the State Government and the Reserve Bank on the shares of the Financial Corporation as may be fixed by agreement between the State Government and the Reserve Bank:

Provided that the total amount in the said fund shall at no time exceed ten per cent. of the paid-up share capital of the Financial Corporation.

(2) No shareholder of the Financial Corporation, other than the State Government and the Reserve Bank, shall have any claim to the special reserve fund.

(3) The amount standing to the credit of the special reserve fund may be utilised by the Financial Corporation for only such purposes as are approved by the State Government and the Reserve Bank.]

[*] Inserted by the State Financial Corporations (Amendment) Act, 1962 (VI of 1962), S. 19 (16-4-1962).

36. General meetings.— (1) A general meeting (hereinafter referred to as the annual general meeting) shall be held annually at a place in the State where there is an office of the Financial Corporation within °[three months] from the date on which the annual accounts of the Financial Corporation are closed, and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the report of the Board on the working of the Financial Corporation throughout the year and the auditor's report on the annual balance-sheet and accounts.

[°] Substituted for "two months" by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), S. 19 (1-10-1956).

37. Audit.—(1) The affairs of the Financial Corporation shall be audited by not less than two auditors duly qualified to act as auditors of companies under sub-section (1) of *[section 226 of the Companies Act, 1956], one of whom shall be appointed by the State Government in consultation with the Comptroller and Auditor-General of India and †[the other auditor or auditors] elected in the prescribed manner by the parties mentioned in clauses (c) and (d) of sub-section (3) of section 4, and such remuneration as the State Government may fix shall be paid to the auditors by the Financial Corporation:

‡[Provided that where such other auditor or auditors are to be elected for the first time after the establishment of the Financial Corporation, the Board may appoint such auditor or auditors who shall hold office until the election is held.]

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Financial Corporation, and it shall be his duty to examine it, together with the accounts and vouchers relating thereto, and every auditor shall have a list delivered to him of all books kept by the Financial Corporation and shall at all reasonable times have access to the books, accounts and other documents of the Financial Corporation and may in relation to such accounts examine any director or officer of the Financial Corporation,

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of affairs of the Financial Corporation, and in case they had called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

(4) The State Government may, in consultation with the Comptroller and Auditor-General of India, at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Financial Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Financial Corporation and may enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted, or direct that any other examination be made by the auditors, if in its opinion public interest so requires.

(5) The Financial Corporation shall send a copy of every report of the auditors to the Comptroller and Auditor-General of India at least one month before it is placed before the shareholders.

(6) Notwithstanding anything contained in the preceding sub-sections, the Comptroller and Auditor-General of India may, either of his own motion or on a request received in this behalf from a State Government, undertake such audit and at such times as he may consider necessary:

Provided that, where the State Government is required to make any payment on account of the guarantee given by it under section 6 or §[section 7 or section 8], as the case may be, such audit shall be undertaken by the Comptroller and Auditor-General of India.

(7) Every audit report under sub-section (6) shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislature of the State.

[°] Substituted for "section 144 of the Indian Companies Act, 1913" by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 20 (1-10-1956).

[†] Substituted for "the other", ibid.

[‡] Inserted, ibid.

[§] Substituted for "sub-section (2) of section 7", ibid, 1962 (VI of 1962), Section 20 (16-4-1962).

°[**37-A. Inspection.**—(1) The Reserve Bank at any time may, with the approval of the Central Government, and on being directed so to do by that Government shall cause an inspection to be made by one or more of its officers of the working of any Financial Corporation and its books and accounts; and the Reserve Bank shall send the report of such inspection to the Central Government and to the State Government and shall supply a copy thereof to the Financial Corporation.

(2) It shall be the duty of every director or every officer of the Financial Corporation to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the Financial Corporation as the said officer may require of him within such time as the said officer may specify.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, or in any other law for the time being in force, no Court, tribunal or other authority shall have power to require the Reserve Bank or any of its officers to produce before such Court, tribunal or other authority the report of the inspection made by it under sub-section (1) or any copy thereof.

(4) The State Government may, after considering any report sent to it under sub-section (1), give such instruction to the Board as it considers necessary and it shall be the duty of the Board to comply with such instructions.]

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 21 (1-10-1956].

38. Returns.—(1) The Financial Corporation shall furnish a statement, in the prescribed form, of its assets and liabilities as at the close of business on the last Friday of each month, or, if that day is a public holiday under the Negotiable Instruments Act, 1881, as at the close of business on the preceding working day to the State Government and to the Reserve Bank within ten days from the date to which the statement relates.

(2) The Financial Corporation shall furnish in the prescribed form to the State Government and to the Reserve Bank once every three months or, as frequently as the State Government or the Reserve Bank may require a statement showing the classification of its loans and investments and of all loans guaranteed by it and underwriting agreements entered into by it.

(3) The Financial Corporation shall furnish to the State Government and to the Reserve Bank within °[four months] of the close of each financial year a statement in the prescribed form of its assets and liabilities as at the close of that year, together with a profit and loss account for the year, the auditors' report and a report of the working of the Financial Corporation during the year and copies of the said statement, account and reports shall be published in the Official Gazette and shall also be laid before the Legislature of the State.

[°] Substituted for "three months" by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 22 (1-10-1956).

Note.—Provisions of Sections 37-A and 38 have been applied to the Madras Industrial Investment Corporation, Ltd., Madras—See S.O. 2366, Gaz. of Ind., 1961, Pt. II, Sec. 3 (ii), page 2460.

CHAPTER V
MISCELLANEOUS

39. Power to give instructions to Financial Corporation on questions of policy.—(1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government *[in consultation with the Reserve Bank].

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government *[under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of section 37A] the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any Court.

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 23 (1-10-1956).

40. Declaration of fidelity and secrecy.—Every director, auditor, officer or other employee of the Financial Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the schedule.

41. Indemnity of directors.—(1) Every director shall be indemnified by the Financial Corporation against all losses and expenses incurred by him in the discharge of his duties except such as are caused by his own wilful act or default.

(2) A director shall not be responsible for any other director or for any officer or other employee of the Financial Corporation or for any loss or expenses resulting to the Financial Corporation by the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Financial Corporation or by the wrongful act of any person under obligation to the Financial Corporation or by anything done in good faith in the execution of the duties of his office or in relation thereto.

*[**41-A. Protection of action taken by persons appointed under section 27 or section 32-A.**—No suit, prosecution or other legal proceeding shall lie against any person appointed as director, administrator, managing agent or manager by the Financial Corporation in pursuance of section 27 or section 32-A for anything which is in good faith done or intended to be done by him as such director, administrator, managing agent or manager.]

[*] Inserted by the State Financial Corporations (Amendment) Act, 1962 (VI of 1962), Section 21 (16-4-1962).

42. Offences.—(1) Whoever, in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Whoever, without the consent in writing of Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No Court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Financial Corporation authorized by the Board in this behalf.

43. Provisions relating to income-tax and super-tax.—For the purposes of the Indian Income-tax Act, 1922, the Financial Corporation shall be deemed to be a

company within the meaning of that Act and shall be liable to income-tax and super-tax accordingly on its income, profits and gains:

Provided that any sum paid by the State Government under the guarantee given in pursuance of section 6 or *[section 7 or section 8] shall not be treated as the income, profits and gains of the Financial Corporation and any interest on debentures, †[bonds or deposits] paid by the Financial Corporation out of such sum shall not be treated as expenditure incurred by it:

Provided further that in the case of any shareholder such portion of a dividend as has been paid out of any such sum advanced by the State Government shall be deemed to be ‡[his] income from "interest on securities" §[and the income-tax shall be payable thereon as if it were the interest receivable on any security of a State Government issued income-tax free] within the meaning of section 8 of that Act.

[*] Substituted for "under any guarantee given in pursuance of sub-section (2) of section 7" by Act 6 of 1972, Section 22 (16-4-1962).

[†] Substituted for "or bonds", ibid.

[‡] Substituted for "its" by the Repealing and Amending Act, 1952 (XLVIII of 1952), Section 3 and Schedule II (2-8-1952).

[§] Substituted for "declared to be income-tax free", ibid, 1962 (6 of 1962), S. 22 (16-4-1962).

*[**43-A.** Delegation of powers.—The Board may, by general or special order, delegate to the managing director or to any other officer of the Financial Corporation subject to such conditions and limitations, if any, as may be specified in the order such of its powers and duties under this Act as it may deem necessary.]

[*] Inserted by Act 6 of 1962, Section 23 (16-4-1962).

44. Act XVIII of 1891 to apply to the books of the Financial Corporation.—The Financial Corporation shall be deemed to be a bank for the purposes of the Bankers' Books Evidence Act, 1891.*

[*] See Vol. I, p. 884 of this Manual for the text of this Act.

45. Liquidation of Financial Corporation.—No provision of law relating to the winding up of companies or corporations shall apply to the Financial Corporation, and the Financial Corporation shall not be placed in liquidation, save by order of the State Government and in such manner as it may direct.

46. Power to apply Act to certain financial institutions in existence at commencement of Act.—(1) The Central Government may, by notification in the official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution in existence at the commencement of this Act which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification.

(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification.

°[**46-A. Extension of jurisdiction of the Financial Corporation to other States by agreement.**—(1) Where a Financial Corporation has been established for any State and any other State desires that the Financial Corporation should serve its needs and the States, after consultation with the Reserve Bank, enter into an agreement which is published in the Official Gazettes of each of those States, then the Financial Corporation shall, on the issue of a notification† in the Official Gazette by the Central Government serve the needs of those States in terms of the agreement.

(2) An inter-State agreement among the participating States may, as far as may be, make all such provisions as are referred to in sub-section (2) of section 3-A.]

[°] Sections 46-A and 46-B were inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 24 (1-10-1956).

[†] For extension of jurisdiction under this provision, see Gaz. of India., 1957, Pt. II, Section 3, p. 2881 (Punjab Financial Corporation) and Gaz. of Ind., 1960, Pt. II, Section 3 (i), p. 135 (Assam Financial Corporation); Gaz. of Ind., 1964, Pt. II, Section 3 (ii), Extra., page 677 (Maharashtra State Financial Corporation).

*[**46-B. Effect of Act on other laws.**—The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.]

[°] See Foot-note [°] under Section 46-A.

47. Power of State Government to make rules.—The State Government may make rules not inconsistent with the provisions of this Act to give effect to the provisions of this Act and in particular, such rules may provide for the limitation on the voting rights of a shareholder and the manner in which such voting rights may be exercised and where there is any inconsistency between the rules and the regulations made under this Act, the rules shall prevail.

48. Power of Board to make regulations.—(1) The Board may, after consultation with the Reserve Bank and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for—

(a) the holding and conduct of elections under this Act, including the final decision on doubts or disputes regarding the validity of elections;

(b) the manner in which, and the conditions subject to which, the first allotment of the shares of the Financial Corporation shall be made;

(c) the manner in which, and the conditions subject to which, the shares of the Financial Corporation may be held and transferred and generally all matters relating to the rights and duties of shareholders;

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(e) the calling of meetings of the Board and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat;

(f) the manner and terms of issue and repayment of bonds and debentures by the Financial Corporation.

(g) the conditions which the Financial Corporations may impose in granting loans or advances;

(h) the manner of determining the sufficiency of the security taken under sub-section (2) of section 25;

(i) the forms of returns and statements required under this Act;

(j) the duties and conduct of officers, other employees, advisers and agents of the Financial Corporation;

(k) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation;

Section 46-B — Note 1

(1) Section 46-B provides that the provisions of the Act and of any rules or orders made thereunder shall take effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. ILR (1972) Cut 1017 (1024) ** AIR 1963 Punj 555 (556) = ILR (1963) 1 Punj 840.

(l) the taking over of the management of any industrial concern on a breach of its agreement with the Financial Corporation;

(m) the appointment of advisory committees for technical and other advice for the purposes of this Act *[fees for attending meetings thereof and the conduct of business thereat]; and

(n) generally, the efficient conduct of the affairs of the Financial Corporation.

(3) All regulations made under this section shall be published in the Official Gazette and shall come into force on such publication.

[*] Inserted by the State Financial Corporations (Amendment) Act, 1956 (LVI of 1956), Section 25 (1-10-1956).

THE SCHEDULE

(See section 40)

DECLARATION OF FIDELITY AND SECRECY

I, ..., do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as a director, officer, employee or auditor (as the case may be) of the Financial Corporation and which properly relate to any office or position in the said Financial Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Financial Corporation, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Financial Corporation and relating to the business of the Financial Corporation.

Signature.

Signed before me:

[THE] STATE OF HIMACHAL PRADESH ACT, 1970
(ACT No. 53 OF 1970)

[The text of the Act printed here is as on 31-8-1973.]

CONTENTS

SECTIONS

PART I
PRELIMINARY

1. Short title.
2. Definition.

PART II

ESTABLISHMENT OF THE STATE OF HIMACHAL PRADESH

3. Establishment of State of Himachal Pradesh.
4. Amendment of First Schedule to the Constitution.

PART III

REPRESENTATION IN THE LEGISLATURES THE COUNCIL OF STATES

5. Amendment of Fourth Schedule to the Constitution.
6. Allocation of sitting members.
7. Amendment of Section 27A of Act 43 of 1950.

The House of the People.

8. Omitted.
9. Omitted.

The Legislative Assembly.

10. Provision as to Legislative Assembly as constituted on the appointed day.
11. Duration of Legislative Assembly.
12. Speaker and Deputy Speaker.
13. Rules of Procedure
14. Allocation of seats in the House of the People.
15. Allocation of seats in the Legislative Assembly.
16. Amendment of First and Second Schedules to Act 43 of 1950.
17. Delimitation of constituencies.
18. Power of Election Commission to maintain delimitation orders up-to-date.
19. Amendment of Scheduled Castes Orders.
20. Amendment of Scheduled Tribes Orders.

PART IV
HIGH COURT

21. High Court for Himachal Pradesh.
22. Judges of High Court.
23. Jurisdiction of High Court.
24. Special provision relating to Advocates and Bar Council.
25. Practice and procedure in High Court.
26. Custody of seal of High Court.
27. Form of writs and other processes.

28. Powers of Judges.
29. Procedure as to appeals to Supreme Court.
30. Transfer of proceedings from High Court of Delhi to High Court of Himachal Pradesh.
31. Right to appear or to act in proceedings transferred to High Court of Himachal Pradesh.
32. Savings.

PART V
AUTHORISATION OF EXPENDITURE AND DISTRIBUTION OF REVENUES
33. Authorisation of expenditure pending its sanction by the Legislature.
34. Reports relating to the accounts of the existing Union territory of Himachal Pradesh.
35. Allowances and privileges of Governor of Himachal Pradesh.
36. Distribution of revenues.

PART VI
ASSETS AND LIABILITIES
37. Property, assets, rights, liabilities, obligations, etc.
38. Special provision as to transfer of assets, rights, liabilities, etc., of Union in relation to transferred territories under Act 31 of 1966.

PART VII
PROVISIONS AS TO SERVICES
39. Provision relating to All India Services.
40. Provision relating to certain Services.
41. Provisions relating to other services.
42. Other provisions as to services.
43. Provisions as to continuance of officers in same posts.
44. Advisory Committees.
45. Power of Central Government to give directions.

PART VIII
LEGAL AND MISCELLANEOUS PROVISIONS
46. Amendment of Article 210 and article 239A.
47. Amendment of Act 37 of 1956.
48. Amendment of Act 20 of 1963.
49. Continuance of existing laws and their adaptation.
50. Power to construe laws.
51. Provisions as to continuance of courts, etc.
52. Effect of provisions of Act inconsistent with other laws.
53. Power to remove difficulties.
54. Power to make rules.

THE FIRST SCHEDULE
[See section 19 (1)]

THE SECOND SCHEDULE
[See section 19 (2)]

THE THIRD SCHEDULE
[See section 20 (1)]

THE FOURTH SCHEDULE
[See section 20 (2)]

STATEMENT OF OBJECTS AND REASONS

On 31st July, 1970, it was announced in the Lok Sabha that Government had decided to grant statehood to Himachal Pradesh and a Bill to give effect to that effect would be introduced in Parliament as early as possible. On 3rd September 1970, the House was informed that the necessary Bill in this behalf would be brought forward in the next session of Parliament. The State of Himachal Pradesh Bill, 1970, seeks to establish a new State of Himachal Pradesh comprising the territories of the existing Union territory of Himachal Pradesh and makes the necessary supplemental, incidental and consequential provisions in relation to the establishment of the new State including representation in Parliament and in the State Legislative Assembly.

The notes on clauses explain in detail the various provisions of the Act."—Gaz. of Ind., 11-12-1970, Pt. II, Sec. 2, Extra., p. 1365.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

——Amended by Act XV of 1971.

COGNATE ACTS AND PROVISIONS

1. Andhra State Act, XXX of 1953.
2. States Reorganisation Act, XXXVII of 1956.
3. Bombay Reorganisation Act, XI of 1960.
4. State of Nagaland Act, XXVII of 1962.
5. Punjab Reorganisation Act, XXXI of 1966.
6. North-Eastern Areas (Reorganisation) Act, LXXXI of 1971.

[THE] STATE OF HIMACHAL PRADESH ACT, 1970
(ACT No. 53 OF 1970)*

[25th December, 1970]

An Act to provide for the establishment of the State of Himachal Pradesh and for matters connected therewith.

Be it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 11-12-1970, Pt. II, S. 2, Extra., p. 1362.

PART I
PRELIMINARY

1. Short title.—This Act may be called THE STATE OF HIMACHAL PRADESH ACT, 1970.

2. Definition.— In this Act, unless the context otherwise requires,—

(a) "Administrator" means the administrator appointed by the President under Article 239 of the Constitution;

(b) "appointed day" means the day which the Central Government may, by notification in the Official Gazette, appoint;*

(c) "article" means an article of the Constitution;

(d) "Election Commission" means the Election Commission appointed by the President under article 324;

(e) "existing Union territory of Himachal Pradesh" means the Union territory of Himachal Pradesh as existing immediately before the appointed day;

(f) "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or any part of the existing Union territory of Himachal Pradesh;

(g) "sitting member", in relation to either House of Parliament or of the Legislative Assembly of the existing Union Territory of Himachal Pradesh, means a person who, immediately before the appointed day, is a member of that House or that Assembly;

(h) "treasury" includes a sub-treasury.

[*] 25-1-1971 is the appointed day—see Gaz. of India, 6-1-1971, Pt. II-S. 3 (1) Ext., p. 11.

PART II
ESTABLISHMENT OF THE STATE OF HIMACHAL PRADESH

3. Establishment of State of Himachal Pradesh.— On and from the appointed day*, there shall be established a new State, to be known as the State of Himachal Pradesh, comprising the territories which immediately before that day were comprised in the existing Union Territory of Himachal Pradesh.†

[*] That is 25-1-1971.

[†] Punjab Reorganisation Act, 1966, had added the Lahaul and Spiti district and some other areas from the Punjab which were adjacent to the Union territory of Himachal Pradesh—See S. 5 of that Act (1-11-1966).

4. Amendment of First Schedule to the Constitution.— On and from the appointed day, in the First Schedule to the Constitution,—

(a) under the heading "I. THE STATES", after entry 17, the following entry shall be inserted, namely:—

"**18. Himachal Pradesh.**—The territories which immediately before the commencement of this Constitution were being administered as if they were Chief Commissioners' Provinces under the names of Himachal Pradesh and Bilaspur and the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966.";

(b) under the heading "II. THE UNION TERRITORIES", entry 2 relating to Himachal Pradesh shall be omitted and entries 3 to 10 shall be re-numbered as entries 2 to 9 respectively.

PART III
REPRESENTATION IN THE LEGISLATURES
The Council of States

5. Amendment of Fourth Schedule to the Constitution.— On and from the appointed day, in the Fourth Schedule to the Constitution, in the Table,—

(a) entry 18 shall be re-numbered as entry 19 and before the entry as so re-numbered, the following entry shall be inserted, namely:—

"18. Himachal Pradesh..... 3";

(b) entry 19 shall be omitted.

6. Allocation of sitting members.— (1) On and from the appointed day, the three sitting members of the Council of States representing the existing Union territory of Himachal Pradesh shall be deemed to have been duly elected under clause (4) of article 80 to fill the three seats allotted to the State of Himachal Pradesh in that Council.

(2) The term of office of such sitting members shall remain unaltered.

7. Amendment of section 27-A of Act 43 of 1950.— On and from the appointed day, in section 27A of the Representation of the People Act, 1950, in sub-section (4) the words "Himachal Pradesh" shall be omitted.

The House of the People

8. Allocation of seats in the existing House of the People.—[Omitted by Act 15 of 1971, S. 2 (w.r.e.f. 5-1-1971)].

9. Provision as to sitting members.—[Omitted by Act 15 of 1971, Sec. 2 (w. r. e. f. 5-1-1971).]

The Legislative Assembly

10. Provision as to Legislative Assembly as constituted on the appointed day.— (1) On and from the appointed day*, the total number of seats in the Legislative Assembly of the State of Himachal Pradesh to be filled by persons chosen by direct election from Assembly constituencies shall be sixty and the number of seats to be reserved for the Scheduled Castes and for the Scheduled Tribes of that State shall be fourteen and three respectively; and the Second Schedule to the Representation of the People Act, 1950, shall be deemed to be amended accordingly.

(2) On and from the appointed day, the sixty territorial constituencies of the existing Union territory of Himachal Pradesh shall be deemed to be the constituencies of the Legislative Assembly of the State of Himachal Pradesh and the Delimitation of Parliamentary and Assembly Constituencies Order, 1966, shall be construed accordingly.

(3) Every sitting member of the Legislative Assembly of the existing Union territory of Himachal Pradesh representing a territorial constituency which, on the appointed day, by virtue of the provisions of sub-section (2), becomes a constituency of the State of Himachal Pradesh shall be deemed to have been elected under article 170 to the Legislative Assembly of the State of Himachal Pradesh by that constituency.

(4) Notwithstanding anything contained in any other law for the time being in force, the Legislative Assembly of the State of Himachal Pradesh shall be deemed to be duly constituted on the appointed day.

[*] That is 25-1-1971.

11. Duration of Legislative Assembly.—The period of five years referred to in clause (1) of article 172 shall, in the case of the Legislative Assembly of the State of Himachal Pradesh, be deemed to have commenced on the day on which the duration of the existing Legislative Assembly of the Union territory of Himachal Pradesh commenced under section 5 of the Government of Union Territories Act, 1963.

12. Speaker and Deputy Speaker.— The persons who immediately before the appointed day* are the Speaker and the Deputy Speaker of the Legislative Assembly of the Union territory of Himachal Pradesh shall be the Speaker and the Deputy Speaker, respectively, of the Legislative Assembly of the State of Himachal Pradesh on and from that day.

[*] That is 25-1-1971.

13. Rules of procedure.— The rules of procedure and conduct of business of the Legislative Assembly of the existing Union territory of Himachal Pradesh as in force immediately before the appointed day shall, until rules are made under clause (1) of article 208, be the rules of procedure and conduct of business of the Legislative Assembly of the State of Himachal Pradesh, subject to such modifications and adaptations as may be made therein by the Speaker thereof.

Delimitation of constituencies

14. Allocation of seats in the House of the People.— In the House of the People to be constituted after the appointed day, there shall be allotted four seats to the State of Himachal Pradesh of which one seat shall be reserved for the Scheduled Castes.

15. Allocation of seats in the Legislative Assembly.— The total number of seats in the Legislative Assembly of the State of Himachal Pradesh to be constituted at any time after the appointed day, to be filled by persons chosen by direct election from territorial constituencies, shall be sixty-eight of which sixteen seats shall be reserved for the Scheduled Castes and three seats shall be reserved for the Scheduled Tribes.

16. Amendment of First and Second Schedules to Act 43 of 1950.— (1) In the Representation of the People Act, 1950,—

(a) in the First Schedule,—

(i) under the heading "I. STATES", after entry 17, the following entry shall be inserted, namely:—

"18. Himachal Pradesh.....4 1....";

(ii) under the heading "II. UNION TERRITORIES", entry 6 relating to Himachal Pradesh shall be omitted;

(b) in the Second Schedule,—

(i) under the heading "I. STATES", after entry 16, the following entry shall be inserted, namely:—

"17. Himachal Pradesh.....68 16 3",

(ii) under the heading "II. UNION TERRITORIES", entry 2 relating to Himachal Pradesh shall be omitted.

(2) The amendments made by clauses (a) and (b) of sub-section (1) shall have effect in relation to the House of the People and the Legislative Assembly of Himachal Pradesh to be constituted at any time after the appointed day.

17. Delimitation of constituencies.— (1) The Election Commission shall, in the manner herein provided, distribute, whether before or after the appointed day, the seats in the House of the People allotted to the State of Himachal Pradesh under section 14 and the seats assigned to the Legislative Assembly of the State of Himachal Pradesh under section 15 to single-member territorial constituencies and delimit them on the basis of the latest census figures, having regard to the provisions of the Constitution and to the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far

as practicable, in those areas where the proportion of their population to the total population is comparatively large; and

(d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total population is the largest.

Explanation.— In this section, "latest census figures" mean the census figures with respect to the existing Union territory of Himachal Pradesh or, as the case may be, of the State of Himachal Pradesh ascertainable from the latest census of which the finally published figures are available.

(2) For the purpose of assisting it in the performance of its functions under sub-section (1), the Election Commission shall associate with itself as associate members,—

*[(a) all the persons (or as many of them as are available) having been elected from parliamentary constituencies in the Union territory of Himachal Pradesh, were members of the House of the People immediately before its dissolution by the order of the President published with notification No. 37/2/70/T, dated 27th December, 1970, of the Lok Sabha Secretariat, in the Gazette of India, dated the 27th December, 1970, or if the delimitation of any constituencies is taken up after first constitution, following such dissolution, of the House of the People, all the members elected to such House (or as many of them as are available) from parliamentary constituencies in the State of Himachal Pradesh; and]

(b) such six of the members of the Legislative Assembly of the existing Union territory of Himachal Pradesh or, as the case may be, of the State of Himachal Pradesh referred to in section 10 as the Speaker thereof may nominate:

Provided that none of the associate members shall have a right to vote or to sign any decision of the Election Commission.

(3) If owing to death or resignation, the office of an associate member falls vacant, it shall be filled, if practicable, in accordance with the provisions of sub-section (2).

(4) The Election Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Official Gazette and in such other manner as the Commission may consider fit, together with a notice inviting objections and suggestions in relation to the proposals and specifying a date on or after which the proposals will be further considered by it;

(b) consider all objections and suggestions which may have been received by it before the date so specified;

(c) after considering all objections and suggestions which may have been received by it before the date so specified, determine by one or more orders the delimitation of constituencies and cause such order or orders to be published in the Official Gazette; and upon such publication, the order or orders shall have the full force of law and shall not be called in question in any court.

(5) As soon as may be after such publication, every such order relating to parliamentary constituencies shall be laid before the House of the People and every such order relating to assembly constituencies shall be laid before the Legislative Assembly.

[*] Substituted by Act 15 of 1971, S. 3 (w. r. e. f. 5-1-1971).

18. Power of Election Commission to maintain delimitation orders up-to-date.— (1) The Election Commission may, from time to time, by notification in the Official Gazette,—

(a) correct any printing mistake in any order made under section 17 or any error arising therein from inadvertent slip or omission;

(b) where the boundaries or name of any territorial division mentioned in any such order are or is altered make such amendments as appear to it to be necessary or expedient for bringing such order up-to-date.

(2) Every notification under this section relating to a parliamentary or an assembly constituency shall be laid, as soon as may be after it is issued, before the House of the People or, as the case may be, the Legislative Assembly.

19. Amendment of Scheduled Castes Orders.—(1) On and from the appointed day°, the Constitution (Scheduled Castes) Order, 1950, shall stand amended as directed in the First Schedule.

(2) On and from the appointed day, the Constitution (Scheduled Castes) (Union Territories) Order, 1951, shall stand amended as directed in the Second Schedule.

[°] That is 25-1-1971.

20. Amendment of Scheduled Tribes Orders.— (1) On and from the appointed day°, the Constitution (Scheduled Tribes) Order, 1950, shall stand amended as directed in the Third Schedule.

(2) On and from the appointed day*, the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, shall stand amended as directed in the Fourth Schedule.

[°] That is 25-1-1971.

PART IV
HIGH COURT

21. High Court for Himachal Pradesh.— (1) On and from the appointed day*, there shall be a separate High Court for the State of Himachal Pradesh (hereinafter referred to as the High Court of Himachal Pradesh,)

(2) The principal seat of the High Court of Himachal Pradesh shall be at Simla.

[°] That is 25-1-1971.

Note.— Prior to this Himachal Pradesh was governed by the Delhi High Court. Before extension of jurisdiction of Delhi High Court to H. P. Union territory there was a Judicial Commissioners' Court for that area.

22. Judges of High Court.— (1) The President may, if he thinks fit, direct that such of the Judges of the High Court of Delhi holding office immediately before the appointed day as may be determined by him, shall on that day cease to be Judges of the High Court of Delhi and become Judges of the High Court of Himachal Pradesh.

(2) The persons who by virtue of sub-section (1) become Judges of the High Court of Himachal Pradesh shall, except in the case where any such person is appointed to be the Chief Justice of the High Court, rank in that Court according to the priority of their respective appointments as Judges of the High Court of Delhi.

23. Jurisdiction of High Court.— The High Court of Himachal Pradesh shall have, in respect of any part of the territories comprised in the State of Himachal Pradesh, all such jurisdiction, powers and authority as, under the law in force immediately before the appointed day,° are exercisable in respect of that part of the said territories by the High Court of Delhi.

[°] That is 25-1-1971.

24. Special provision relating to Advocates and Bar Council.— (1) Subject to any rule made or direction given by the High Court of Himachal Pradesh in this behalf, any person who immediately before the appointed day is an advocate entitled to practise in the High Court of Delhi shall be entitled to practise as an advocate in the High Court of Himachal Pradesh.

(2) The right of audience in the High Court of Himachal Pradesh shall be regulated in accordance with the like principles as immediately before the appoint-

ed day are in force with respect to the right of audience in the High Court of Delhi.

(3) On and from the appointed day, in the Advocates Act, 1961 (hereafter in this section referred to as the Advocates Act), in section 3,—

(a) in sub-section (1), for clause (d), the following clauses shall be substituted, namely:—

"(d) for the States of Punjab and Haryana and the Union territory of Chandigarh, to be known as the Bar Council of Punjab and Haryana;

(dd) for the State of Himachal Pradesh, to be known as the Bar Council of Himachal Pradesh;";

(b) in clause (b) of sub-section (2), after the words "Bar Council of Orissa", the words "the Bar Council of Himachal Pradesh" shall be inserted.

(4) The provisions of section 17 of the Advocates Act shall have effect in respect of the roll of the Bar Council of Himachal Pradesh subject to the modifications that—

(a) for clause (a) of sub-section (1) of the said section 17, the following clause shall be substituted, namely:—

"(a) all persons who were entered as advocates on the roll of the Bar Council of Punjab and Haryana immediately before the day appointed under clause (b) of Section 2 of the State of Himachal Pradesh Act, 1970, and who within three months from that day express in such manner as the Bar Council of India may, by rules, prescribe an intention in writing to practise within the jurisdiction of the Bar Council of Himachal Pradesh;";

(b) in clause (a) of sub-section (3) of the said section 17, for the words and figures "with his date of enrolment under the Indian Bar Councils Act, 1926", the words "with his seniority on the roll of the Bar Council of Punjab and Haryana" shall be substituted.

(5) Notwithstanding anything contained in the Advocates Act as amended or modified by sub-sections (3) and (4),—

(a) in the case of the first Bar Council of Himachal Pradesh under that Act, the fifteen members required to be elected under clause (b) of sub-section (2) of section 3 of that Act, as amended by sub-section (3), shall be nominated by the Chief Justice of the High Court of Himachal Pradesh from amongst advocates who are entitled as of right to practise in the High Court of Himachal Pradesh and are ordinarily practising within the territories comprised in the State of Himachal Pradesh and the term of office of the members so nominated shall be one year from the date of the first meeting of the Council or until their successors are duly elected in accordance with the provisions of the said Act, whichever is earlier;

(b) until the members of the first Bar Council of Himachal Pradesh required to be nominated under clause (a) are duly nominated in accordance with the provisions of that clause, the Bar Council of Punjab and Haryana shall function as the Bar Council of Himachal Pradesh and the provisions of the Advocates Act shall, so far as may be, apply accordingly;

(c) the names of persons entered on the roll of the Bar Council of Himachal Pradesh in accordance with the provisions of clause (a) of sub-section (1) of section 17 of the Advocates Act, as modified by sub-section (4), shall, as from the date or dates on which the names are so entered, stand removed from the roll of the Bar Council of Punjab and Haryana;

(d) any proceedings which may be pending or which may be instituted against any person before or by the Bar Council of Punjab and Haryana immediately before his name is removed under clause (c) from the roll of that Bar Council may after such removal be continued or instituted before or by the Bar Council of Himachal Pradesh;

(e) every person who immediately before his name stands removed from the roll of the Bar Council of Punjab and Haryana in accordance with the provisions of clause (c) is a member of the Bar Council of Punjab and Haryana shall cease to be a member of that Council as from the date on which his name stands so removed from the roll of that Bar Council;

(f) the rules made or deemed to have been made by the Bar Council of Punjab and Haryana and in force immediately before the date on which the first Bar Council of Himachal Pradesh is duly constituted in accordance with the provisions of clause (a) shall, subject to such modifications and adaptations as may be made therein by the Chairman of the Bar Council of Himachal Pradesh, be deemed to be rules made by the Bar Council of Himachal Pradesh and shall have effect accordingly.

(6) As soon as may be, after the first Bar Council of Himachal Pradesh is duly constituted in accordance with the provisions of clause (a) of sub-section (5), the assets and liabilities of the Bar Council of Punjab and Haryana shall be apportioned between that Bar Council and the Bar Council of Himachal Pradesh in such manner and proportion as may be agreed upon by the two Bar Councils and in default of agreement with reference to any matter, the matter shall be referred to the Chairman of the Bar Council of India and his decision thereon shall be final.

Explanation.— Expressions used in this section but not defined in this Act shall have the meanings assigned to them respectively in the Advocates Act.

25. Practice and procedure in High Court.— Subject to the provisions of this Part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Delhi shall, with the necessary modifications, apply in relation to the High Court of Himachal Pradesh.

26. Custody of seal of High Court.—The law in force immediately before the appointed day with respect to the custody of the seal of the High Court of Delhi shall, with the necessary modifications, apply with respect to the custody of the seal of the High Court of Himachal Pradesh.

27. Form of writs and other processes.— The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the High Court of Delhi shall, with the necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the High Court of Himachal Pradesh.

28. Powers of Judges.— The law in force immediately before the appointed day with respect to the powers of the Chief Justice, single Judges and division courts of the High Court of Delhi and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Himachal Pradesh.

29. Procedure as to appeals to Supreme Court.— The law in force immediately before the appointed day relating to appeals to the Supreme Court from the High Court of Delhi and the Judges and division courts thereof, shall, with the necessary modifications, apply in relation to the High Court of Himachal Pradesh.

30. Transfer of proceedings from High Court of Delhi to High Court of Himachal Pradesh.— (1) Except as hereinafter provided, the High Court of Delhi shall, on and from the appointed day, have no jurisdiction in respect of the territories comprised in the State of Himachal Pradesh.

(2) Such proceedings pending in the High Court of Delhi immediately before the appointed day as are certified, whether before or after that day, by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Himachal Pradesh shall, as soon as may be after such certification be transferred to the High Court of Himachal Pradesh.

(3) Notwithstanding anything contained in sub-sections (1) and (2) of this section or in section 23, but save as hereinafter provided, the High Court of Delhi shall have, and the High Court of Himachal Pradesh shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court of Delhi before the appointed day:

Provided that if, after any such proceedings have been entertained by the High Court of Delhi, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Himachal Pradesh, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court of Delhi—

(a) before the appointed day, in any proceedings transferred to the High Court of Himachal Pradesh by virtue of sub-section (2); or

(b) in any proceedings with respect to which the High Court of Delhi retains jurisdiction by virtue of sub-section (3), shall, for all purposes, have effect not only as an order of the High Court of Delhi, but also as an order made by the High Court of Himachal Pradesh.

Explanation.— For the purposes of this section—

(a) proceedings shall be deemed to be pending in a court until that court has disposed of all issues between the parties including any issues with respect to the taxation of the costs of the proceedings and shall include appeals, applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petitions for writs;

(b) references to a High Court shall be construed as including references to a Judge or division court thereof, and references to an order made by a court or a Judge shall be construed as including references to a sentence, judgment or decree passed or made by that court or Judge.

31. Right to appear or to act in proceedings transferred to High Court of Himachal Pradesh.— Any person who, immediately before the appointed day, is an advocate entitled to practise in the High Court of Delhi and was authorised to appear or to act in any proceedings transferred from that High Court to the High Court of Himachal Pradesh under Section 30 shall have the right to appear or to act, as the case may be, in the High Court of Himachal Pradesh in relation to those proceedings.

32. Savings.— Nothing in this Part shall affect the application to the High Court of Himachal Pradesh of any provisions of the Constitution, and this Part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision.

PART V

AUTHORISATION OF EXPENDITURE AND DISTRIBUTION OF REVENUES

33. Authorisation of expenditure pending its sanction by the Legislature.— (1) The President may, at any time before the appointed day, authorise by order such expenditure from the Consolidated Fund of the State of Himachal Pradesh as he deems necessary for a period of not more than six months beginning with the appointed day, pending the sanction of such expenditure by the Legislative Assembly of the State of Himachal Pradesh:

Provided that the Governor of Himachal Pradesh may, after the appointed day, authorise by order such further expenditure as he deems necessary from the Consolidated Fund of the State of Himachal Pradesh for any period not extending beyond the said period of six months.

(2) The President or, as the case may be, the Governor of Himachal Pradesh shall make separate orders under sub-section (1) in respect of periods falling in different financial years.

34. Reports relating to the accounts of the existing Union territory of Himachal Pradesh.— (1) The reports of the Comptroller and Auditor-General of India referred to in section 49 of the Government of Union Territories Act, 1963, relating to the accounts of the existing Union territory of Himachal Pradesh in respect of any period prior to the appointed day, shall be submitted to the Governor of Himachal Pradesh who shall cause them to be laid before the Legislative Assembly of the State.

(2) The Governor may, by order,—

(a) declare any expenditure incurred out of the Consolidated Fund of the existing Union territory of Himachal Pradesh on any service in respect of any period prior to the appointed day during the financial year 1970-71 or in respect of any earlier financial year in excess of the amount granted for that service and for that year as disclosed in the reports referred to in sub-section (1) to have been duly authorised, and

(b) provide for any action to be taken on any matter arising out of the said reports.

35. Allowances and privileges of Governor of Himachal Pradesh.— The allowances and privileges of the Governor of Himachal Pradesh shall, until provision in that behalf is made by Parliament by law under clause (3) of article 158, be such as the President may, by order, determine.

36. Distribution of revenues.— The President shall, by order, determine the grants-in-aid of the revenues of the State of Himachal Pradesh and the share of that State in the Union duties of excise, estate duty and taxes on income and for that purpose amend thereby the relevant provisions of the Union Duties of Excise (Distribution) Act, 1962, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Estate Duty (Distribution) Act, 1962, and the Constitution (Distribution of Revenues) Order, 1969, in such manner as he thinks fit.

PART VI

ASSETS AND LIABILITIES

37. Property, assets, rights, liabilities, obligations, etc.— (1) All such property and assets within the existing Union territory of Himachal Pradesh as are held immediately before the appointed day by the Union for purposes of governance of that Union territory shall, on and from that day, pass to the State of Himachal Pradesh unless the purposes for which such property and assets are so held are Union purposes:

Provided that the cash balances in the treasuries in the Union territory of Himachal Pradesh before the appointed day shall, as from that day, vest in the State of Himachal Pradesh.

(2) All rights, liabilities and obligations (other than those relatable to, or in connection with, a Union purpose), whether arising out of any contract or otherwise, which are, immediately before the appointed day,—

(a) the rights, liabilities and obligations of the Central Government arising out of, or in connection with the governance of the Union territory of Himachal Pradesh; or

(b) the rights, liabilities and obligations of the Administrator of the existing Union territory of Himachal Pradesh in his capacity as such, or of the Government of that Union territory,

shall, on and from the appointed day, be the rights, liabilities and obligations of the Government of the State of Himachal Pradesh.

(3) The right to recover arrears of—

(a) any tax or duty being a tax or duty enumerated in the State List in the Seventh Schedule to the Constitution, or

(b) any duty referred to in Article 268, or

(c) any tax under the Central Sales Tax Act, 1956,

which have fallen due in the existing Union territory of Himachal Pradesh shall pass to the State of Himachal Pradesh.

(4) The provisions of this section shall not apply to or in relation to,—

(a) any benefit or burden of any assets, rights, liabilities or obligations of the Union under the Punjab Reorganisation Act, 1966 attributable to the transferred territories as defined in the said Act;

(b) any institution, undertaking or project the expenditure in relation to which is immediately before the appointed day met from out of the Consolidated Fund of India;

(c) any property which has been placed by the Union at the disposal of the Administration of the existing Union territory of Himachal Pradesh subject to the condition that the ownership thereof will continue to vest in the Union.

Explanation.— For the purposes of this section—

(a) "liability" includes liability in respect of any civil deposit, local fund deposit, charitable or other endowment, provident fund account, pension or actionable wrong;

(b) "Union purposes" mean the purposes of Government relatable to any of the matters mentioned in the Union List.

38. Special provision as to transfer of assets, rights, liabilities, etc., of Union in relation to transferred territories under Act 31 of 1966.— (1) In this section, the expressions "successor States" and "transferred territories" have the meanings respectively assigned to them in the Punjab Reorganisation Act, 1966.

(2) The Central Government may, by order, transfer to the State of Himachal Pradesh the benefit or burden of any assets rights, liabilities or obligations of the Union under the Punjab Reorganisation Act, 1966, in so far as such benefit or burden is, in the opinion of the Central Government, attributable to the transferred territories.

(3) An order made under sub-section (2) may provide that the State of Himachal Pradesh shall be successor State in relation to the transferred territories for all or any of the purposes of the Punjab Reorganisation Act, 1966, or confer or impose on the State of Himachal Pradesh rights and obligations which correspond so far as may be to the rights and obligations conferred or imposed on the successor States by or under that Act.

(4) Without prejudice to the provisions of Section 49, the Central Government may, for the purpose of giving effect to the provisions of this section, by order, direct that the provisions of Part VI, Part VII, Part VIII and Part IX and connected provisions of the Punjab Reorganisation Act, 1966, shall have effect subject to such exceptions and modifications as may be specified in the order.

PART VII
PROVISIONS AS TO SERVICES

39. Provisions relating to All India Services.— (1) In this section the expression "State cadre", —

(a) in relation to the Indian Administrative Service, has the meaning assigned to it in the Indian Administrative Service (Cadre) Rules, 1954;

(b) in relation to the Indian Police Service, has the meaning assigned to it in the Indian Police Service (Cadre) Rules, 1954;

(c) In relation to the Indian Forest Service has the meaning assigned to it in the Indian Forest Service (Cadre) Rules, 1966.

(2) On and from the appointed day there shall be constituted for the State of Himachal Pradesh a State cadre of the Indian Administrative Service, a State cadre of the Indian Police Service and a State cadre of the Indian Forest Service.

(3) The initial strength and composition of each of the said State cadres shall be such as the Central Government may, by order, determine before the appointed day.

(4) Such of the members of each of the said Services borne on the Union Territories cadre thereof immediately before the appointed day, as the Central Government may, by order, specify, shall be allocated to the State cadre of Hima-

chal Pradesh of the same Service with effect from such date or dates as may be specified in the order.

(5) Nothing in this section shall be deemed to affect the operation after the appointed day of the All-India Services Act 1951, or the rules or regulations made thereunder in relation to the State cadres of the said Services referred to in sub-section (2) or sub-section (4) and in relation to the members of those services borne on the State cadres.

40. Provision relating to certain Services.— (1) On and from the appointed day, there shall be constituted for the State of Himachal Pradesh the following Services, namely:—

(a) the Himachal Pradesh Administrative Service; and

(b) the Himachal Pradesh Police Service.

(2) The initial strength and composition of the cadres of the said services shall be such as the Administrator of the existing Union territory of Himachal Pradesh may, with the approval of the Central Government, by order, determine before the appointed day.

(3) On and from the appointed day, the existing Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service (hereinafter referred to as the existing Civil Service) shall be known as the Delhi and Andaman and Nicobar Islands Civil Service and Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service (hereinafter referred to as the existing Police Service) shall be known as the Delhi and Andaman and Nicobar Islands Police Service.

(4) Such members of the existing Civil Service as the Central Government may, by order, specify shall be allocated to the cadre of the Himachal Pradesh Administrative Service and such members of the existing Police Service as the Central Government may by order, specify, shall be allocated to the cadre of the Himachal Pradesh Police Service and any such order may specify the date or dates from which the allocation made thereunder shall be effective.

(5) All persons who are allocated under sub-section (4) and who immediately before the date on which they are allocated, are borne on a Select List for promotion to a State cadre of an All-India Service, shall be deemed to have been included in the same order as in that list in the Select List for promotion to the State cadre of the same Service constituted under sub-section (2) of section 39.

(6) Subject to the foregoing provisions of this section, the rules and regulations applicable to or in relation to the members of the existing Civil Service and the existing Police Service as in force immediately before the appointed day shall, so far as may be apply respectively to and in relation to the members of the Himachal Pradesh Administrative Service and the Himachal Pradesh Police Service until altered, repealed or amended by the competent authority.

(7) Every member of the Central Health Service who immediately before the appointed day is holding any post in the existing Union territory of Himachal Pradesh being a post included in the authorised strength of that Service, shall, until otherwise directed by the Central Government, be deemed to be on deputation on and from the appointed day to the Government of the State of Himachal Pradesh on the same terms and conditions of service as are applicable to him under the Central Health Service Rules, 1963, but without any deputation allowance:

Provided that the period of such deputation shall in no case extend beyond a period of three years from the appointed day.

Explanation.— In this sub-section, "Central Health Service" means the Central Health Service constituted under the Central Health Service Rules, 1963.

41. Provisions relating to other services.—(1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Administrator of the Union territory of Himachal Pradesh shall, unless otherwise directed by an order of the Central Govt,, be deemed to have been allocated for service as from that day in connection with the affairs of the State of Himachal Pradesh:

Provided that no directions shall be issued under this section after the expiry of a period of one year from the appointed day:

Provided further that nothing in this section shall affect the operation of section 82 of the Punjab Reorganisation Act, 1966.

(2) The provisions of this section shall not apply in relation to persons to whom the provisions of sections 39 and 40 apply.

42. Other provisions as to services.—(1) Nothing in this section or sections 40 and 41 shall be deemed to affect on or after the appointed day the operations of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the State of Himachal Pradesh:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person referred to in section 40 or section 41 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person allocated under section 40 or deemed to have been allocated under section 41 in connection with the administration of the Union territory of Himachal Pradesh, shall be deemed to have been rendered in connection with the affairs of the State of Himachal Pradesh for the purposes of the rules regulating his conditions of service.

43. Provisions as to continuance of officers in same posts.—Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the administration of the Union territory of Himachal Pradesh, shall continue to hold the same post or office in the State of Himachal Pradesh and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, the State of Himachal Pradesh:

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any order affecting his continuance in such post or office.

44. Advisory Committees.—The Central Government may, by order establish one or more Advisory Committees for the purpose of assisting it in regard to—

(a) the discharge of its functions under this Part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

45. Power of Central Government to give directions.—The Central Government may give such directions to the Government of the State of Himachal Pradesh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and also the provisions of Part IX of the Punjab Reorganisation Act, 1966, and the State Government shall comply with such directions.

PART VIII

LEGAL AND MISCELLANEOUS PROVISIONS

46. Amendment of article 210 and article 239-A.—On and from the appointed day—

(a) in article 210, in clause (2), the following proviso shall be inserted at the end, namely:—

"Provided that in relation to the Legislature of the State of Himachal Pradesh this clause shall have effect as if for the words 'fifteen years' occurring therein, the words 'twenty-five years' were substituted.";

(b) in article 239A, in clause (1), the words "Himachal Pradesh" shall be omitted.

47. Amendment of Act 37 of 1956.—On and from the appointed day, in clause (a) of section 15 of the States Reorganisation Act, 1956,—

(i) for the word "Punjab", the words "Punjab, Himachal Pradesh" shall be substituted.

(ii) for the words "Himachal Pradesh and Chandigarh", the words "and Chandigarh" shall be substituted.

48. Amendment of Act 20 of 1963.—On and from the appointed day, in the Government of Union Territories Act, 1963, in clause (h) of sub-section (1) of section 2 and in sub-section (2) of section 44, the words "Himachal Pradesh" shall be omitted.

49. Continuance of existing laws and their adaptation.—(1) All laws in force, immediately before the appointed day, in the existing Union territory of Himachal Pradesh shall continue to be in force in the State of Himachal Pradesh until altered, repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of facilitating the application in relation to the State of Himachal Pradesh of any law made before the appointed day, the appropriate Government may, within two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression "appropriate Government" means, as respects any law relating to a matter enumerated in the Union List in the Seventh Schedule to the Constitution, the Central Government; and as respects any other law, the Government of the State of Himachal Pradesh.

50. Power to construe laws.—Notwithstanding that no provision or insufficient provision had been made under section 49 for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Himachal Pradesh, construe the law in such manner not affecting the substance as may be necessary or proper in regard to the matter before the court, tribunal or authority, as the case may be.

51. Provisions as to continuance of courts, etc.—All courts and tribunals and all authorities discharging lawful functions throughout the existing Union territory of Himachal Pradesh or any part thereof immediately before the appointed day shall, unless their continuance is inconsistent with the provisions of this Act or until other provision is made by a competent Legislature or other competent authority, continue to exercise their respective functions.

52. Effect of provisions of Act inconsistent with other laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

53. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order, do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty.

(2) Every order made under this section shall be laid before each House of Parliament.

54. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules to give effect to the provisions of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter

have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE FIRST SCHEDULE

[See section 19 (1)]

AMENDMENT OF THE CONSTITUTION (SCHEDULED CASTES) ORDER, 1950

(1) In paragraph 2, for the figure "XIII", the figure "XIV" shall be substituted, and in paragraph 4, for the portion beginning with the words, figures and letter "and any reference in Parts IVA and X of the Schedule" and ending with the words and figures "the first day of November, 1966", the following shall be substituted, namely —

"any reference in Parts IV-A and X of the Schedule to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the first day of November, 1966; and any reference in Part XIV to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the day appointed under clause (b) of section 2 of the State of Himachal Pradesh Act, 1970."

(2) In the Schedule, after Part XIII, the following Part shall be inserted, namely:—

"PART XIV.—Himachal Pradesh

1. Throughout the State except the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966):—

1. Ad-Dharmi.
2. Badhi or Nagalu.
3. Bandhela.
4. Balmiki, Chura or Bhangi.
5. Bangali.
6. Banjara.
7. Bansi.
8. Barad.
9. Barar.
10. Batwal.
11. Bawaria.
12. Bazigar.
13. Bhanjra.
14. Chamar, Mochi, Ramdasi, Ravidasi or Ramdasia.
15. Chanal.
16. Chhimbe (Dhobi).
17. Chuhre.
18. Dagi.
19. Daole.
20. Darai or Daryai.
21. Daule.
22. Dhaki or Toori.
23. Dhaogri or Dhuai.
24. Doom or Doomna.
25. Dumne (Bhanjre).
26. Hali.
27. Hesi.
28. Jogi.
29. Julahe.
30. Kabirpanthi, Julaha or Keer.
31. Kamoh or Dagoli.
32. Karoack.
33. Khatik.
34. Koli.
35. Lohar.
36. Mazhabi.

37. Megh.
38. Nat.
39. Od.
40. Pasi.
41. Phrera.
42. Rehar.
43. Rehara.
44. Sansi.
45. Sapela.
46. Sarde, Sarare or Siryare.
47. Sarehde.
48. Sikligar.
49. Sipi.
50. Sirkiband.
51. Teli.
52. Thathiar or Thathera.

2. In the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966):—

1. Ad-Dharmi.
2. Bangali.
3. Barar, Burar or Berar.
4. Batwal.
5. Bauria or Bawaria.
6. Bazigar.
7. Balmiki, Chura or Bhangi.
8. Bhanjra.
9. Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi or Ravidasi.
10. Chanal.
11. Dagi.
12. Darain.
13. Dhanak.
14. Dhogri, Dhangri or Siggi.
15. Dumna, Mahasha or Doom.
16. Gagra.
17. Gandhila or Gandil Gondola.
18. Kabirpanthi or Julaha.
19. Khatik.
20. Kori or Koli.
21. Marija or Marecha.
22. Mazhabi.
23. Megh.
24. Nat.
25. Od.
26. Pasi.
27. Perna.
28. Pherera.
29. Sanhai.
30. Sanhal.
31. Sansoi.
32. Sansi, Bhedkut or Manesh.
33. Sapela.
34. Sarera.
35. Sikligar.
36. Sirkiband."

THE SECOND SCHEDULE

[See section 19 (2)]

AMENDMENT OF THE CONSTITUTION (SCHEDULED CASTES) (UNION TERRITORIES) ORDER, 1951

(1) In paragraph 4, for the words and figures "Parts II and V" in both the places where they occur, the word and figure "Part V" shall be substituted.

(2) In the Schedule, Part II shall be omitted.

THE THIRD SCHEDULE

[See section 20 (1)]

AMENDMENT OF THE CONSTITUTION (SCHEDULED TRIBES) ORDER, 1950

(1) In paragraph 2 for the figure "XII" the figure "XIII" shall be substituted, and in paragraph 3, for the portion beginning with the words, figures and letter "and any reference in Parts IV and VII-A" and ending with the words, figures and letters "as from the 1st day of May, 1960", the following shall be substituted, namely:—

"any reference in Parts IV and VII-A of the Schedule to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the 1st day of May, 1960; and any reference in Part XIII to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the day appointed under clause (b) of section 2 of the State of Himachal Pradesh Act, 1970."

(2) In the Schedule, after Part XII, the following Part shall be inserted, namely:—

"PART XIII.—Himachal Pradesh

1. Throughout the State, except the territories specified in sub-section (1) of section 5 of the Punjab Reorganisation Act, 1966 (31 of 1966):—

1. Gaddi.
2. Gujjar.
3. Jad, Lamba, Khampa and Bhot or Bodh.
4. Kanaura or Kinnara.
5. Lahaula.
6. Pangwala.

2. In Lahaul and Spiti district:—

1. Gaddi.
2. Swangla.
3. Bhot or Bodh."

THE FOURTH SCHEDULE

[See section 20 (2)]

AMENDMENT OF THE CONSTITUTION (SCHEDULED TRIBES) (UNION TERRITORIES) ORDER, 1951

(1) For paragraph 3, the following paragraph shall be substituted, namely:—

"3. Any reference in this Order to a Union territory shall be construed as a reference to the territory constituted as a Union territory as from the 1st day of November, 1956."

(2) In the Schedule, Part I shall be omitted.

THE STATE OF NAGALAND ACT, 1962
(ACT 27 OF 1962)

[The text of the Act printed here is as on 31-8-1973.]

CONTENTS

SECTIONS

PART I

PRELIMINARY

1. Short title.
2. Definitions.

PART II

FORMATION OF THE STATE OF NAGALAND

3. Formation of State of Nagaland.
4. Amendment of First Schedule to the Constitution.
5. Amendment of Sixth Schedule of the Constitution.

PART III

REPRESENTATION IN THE LEGISLATURES

The Council of States

6. Representation in Council of States.
7. Election to fill vacancy.
8. Term of office.

The House of the people
9. Representation in House of the People.
10. Provision as to sitting members.
The Legislative Assembly
11. Strength of Legislative Assembly.
12. Rules of Procedure.

PART IV
HIGH COURT

13. Common High Court for Assam and Nagaland.
14. Provisions as to Advocates.
15. Practice and procedure in common High Court.
16. Custody of Seal of Common High Court.
17. Form of writs and other processes.
18. Powers of Judges.
19. Principal seat of common High Court.
20. Procedure as to appeals to Supreme Court.
21. Pending suits, appeals and proceedings.

PART V
FINANCIAL PROVISIONS

22. Authorisation of expenditure pending its sanction by Legislature.
23. Distribution of revenues.
24. Property, assets, rights, liabilities and obligations.
25. Arrears of taxes.

PART VI
LEGAL AND MISCELLANEOUS PROVISIONS

26. Continuance of existing laws and their adaptation.
27. Power to construe laws.
28. Provisions as to continuance of courts and of officers, etc.
29. Amendment of Act, 37 of 1956.
30. Effect of provisions of Act inconsistent with other laws.
31. Power to remove difficulties.
32. Power to make rules.
33. (Repeal).
THE SCHEDULE

STATEMENT OF OBJECTS AND REASONS

"In July 1960 the Government of India, in pursuance of an agreement with the leaders of Naga People's Convention decided that the Naga Hills-Tuensang Area (Nagaland), which is at present a Part B Tribal Area within the State of Assam, should be formed in a separate State in the Union of India.

2. The Bill provides for the formation of the Naga Hills-Tuensang Area into a separate State and amends the Sixth Schedule to the Constitution so as to omit all references therein to the said area. The Bill also makes the necessary supplemental and incidental provisions relating to representation in Parliament and in the State Legislature, the apportionment of assets and liabilities between the Central Government and the State Government and other matters. The Bill further provides for the constitution of a common High Court for Assam and Nagaland and a common Bar Council.

3. The Bill also seeks to repeal from the date of formation of the State of Nagaland (Transitional Provisions) Regulation, 1961, which was promulgated by the President to bring into force the interim arrangements pending formation of the State of Nagaland.

4. As required by the proviso to Art. 3 of the Constitution, this Bill was referred by the President to the Legislature of the State of Assam and its views will also be placed before the Parliament."—Gaz. of Ind., 1962, Pt. II, S. 2, Extra., p. 681.

COGNATE ACTS AND PROVISIONS

See under the State of Himachal Pradesh Act, 1970.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Act LXI of 1968.

THE STATE OF NAGALAND ACT, 1962
(ACT 27 OF 1962)*

[4th September, 1962]

An Act to provide for the formation of the State of Nagaland and for matters connected therewith.

Be it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 21-8-1962 Pt. II, Extra., page 681.

PART I
PRELIMINARY

1. **Short title.**—This Act may be called THE STATE OF NAGALAND ACT, 1962.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(a) "appointed day" means the day which the Central Government may, by notification in the Official Gazette, appoint;*

(b) "article" means an Article of the Constitution;

(c) "assembly constituency" and "parliamentary constituency" have the same meanings as in the Representation of the People Act, 1950;

(d) "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument or custom or usage having the force of law;

(e) "Naga Hills-Tuensang Area" means the Naga Hills-Tuensang Area specified in Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution, comprising the areas which at the commencement of the Constitution were known as the Naga-Hills District and the Naga Tribal Area;

(f) "regional council" means the regional council referred to in Art. 371-A.

[*] Date appointed is 1-12-1963—See G.S.R. 1735, dated 30-10-1963, Gaz. of Ind., 9-11-1963, Pt. II, Sec. 3 (i), page 2030.

PART II
FORMATION OF THE STATE OF NAGALAND

3. **Formation of State of Nagaland.**—(1) As from the appointed day, there shall be formed a new State to be known as the State of Nagaland comprising the territories which immediately before that day were comprised in the Naga Hills-Tuensang Area and thereupon the said territories shall cease to form part of the State of Assam.

(2) Without prejudice to the power of the State Government to alter the appointed day,* the name, extent or boundaries of any district, the State of Nagaland shall consist of three districts to be called the Kohima district, Mokokchung district and Tuensang district, each comprising the areas respectively set out in the Schedule.

[*] That is, 1-12-1963.

4. **Amendment of First Schedule to the Constitution.**—As from the appointed day, in the First Schedule to the Constitution, under the heading "I. THE STATES"—

(a) in the paragraph relating to the territories of the State of Assam, the following shall be added at the end, namely:—

"and the territories specified in sub-section (1) of section 3 of the State of Nagaland Act, 1962";

(b) after entry 15, the following entry shall be inserted, namely:—

"16. Nagaland . . . The territories specified in sub-section (1) of section 4 of the State of Nagaland Act, 1962.".

5. **Amendment of Sixth Schedule to the Constitution.**—As from the appointed day, in the Sixth Schedule to the Constitution—

(a) in paragraph 20—

(i) sub-paragraph (2B) shall be omitted;

(ii) in sub-paragraph (3), the brackets and words "(other than the Naga Hills-Tuensang Area)" shall be omitted;

(b) in the Table appended to paragraph 20, in Part B, the item "2. The Naga Hills-Tuensang Area" shall be omitted.

PART III
REPRESENTATION IN THE LEGISLATURES
The Council of States

6. Representation in Council of State.—As from the appointed day—

(a) there shall be allotted one seat to the State of Nagaland in the Council of States;

(b) in the Fourth Schedule to the Constitution, in the Table—

(i) entries 16 to 19 shall be renumbered as entries 17 to 20.

(ii) after entry 15, the following entry shall be inserted, namely:—

"16 Nagaland . . . . . 1".

(iii) at the end, for the figures "224", the figures "225" shall be substituted.

7. Election to fill vacancy.—As soon as may be after the appointed day,* there shall be held an election to fill the seat allotted to the State of Nagaland in the Council of States.

[*] That is, 1-12-1963.

8. Term of office.—The term of office of the member for the first time elected to fill the seat allotted to the State of Nagaland in the Council of States shall expire on the 2nd day of April, 1968.

The House of the People

9. Representation in House of the People.— (1) As from the appointed day—

(a) there shall be allotted one seat to the State of Nagaland in the House of the People;

(b) in the First Schedule to the Representation of the People Act, 1950,—

(i) the entry "25. Naga Hills-Tuensang Area . . . . . 1" shall be omitted;

(ii) entries 16 to 24 shall be renumbered as entries 17 to 25;

(iii) after entry 15, the following entry shall be inserted, namely:—

"16. Nagaland . . . . . 1".

(2) The whole of the State of Nagaland shall form one parliamentary constituency to be called the parliamentary constituency of Nagaland for the purpose of filling the seat allotted to that State in the House of the People.

(3) For the period referred to in clause (2) of article 371A, section 13D of the Representation of the People Act, 1950, shall apply in relation to the parliamentary constituency of Nagaland with the modification that it shall be necessary to prepare and revise separately the electoral roll for that part of the said parliamentary constituency which comprises the Tuensang district and the provisions of Part III of that Act shall apply in relation to the said part as they apply in relation to an assembly constituency.

10. Provision as to sitting member.— The sitting member of the House of the People representing, immediately before the appointed day, the Naga Hills-Tuensang Area shall, as from that day, represent the State of Nagaland in that House and shall continue to do so until a person is elected in accordance with law to fill the seat allotted to the parliamentary constituency of Nagaland.

The Legislative Assembly

11. Strength of Legislative Assembly.— (1) The total number of seats to be filled by persons chosen by direct election in the Legislative Assembly of Nagaland shall be 60:

Provided that for the period referred to in clause (2) of article 371A, the total number of seats in the Legislative Assembly of Nagaland shall be *[52], of which—

(a) *[twelve seats] shall be allocated to the Tuensang district and shall be filled by persons chosen by the members of the regional council from amongst themselves in such manner as the Governor, after consulting that council, may by notification in the Official Gazette specify, and

(b) the remaining forty seats shall be filled by person chosen by direct election from assembly constituencies in the rest of the State of Nagaland.

(2) In the Representation of the People Act, 1950,—

(a) in section 7, the following proviso shall be inserted at the end, namely:—

"Provided that for the period referred to in clause (2) of article 371A, the total number of seats allotted to the Legislative Assembly of Nagaland shall be 46, of which—

(a) six seats shall be allocated to the Tuensang district and shall be filled by persons chosen by the members of the regional council referred to in that article from amongst themselves in such manner as the Governor, after consulting that council, may by notification in the Official Gazette specify, and

(b) the remaining forty seats shall be filled by persons chosen by direct election from assembly constituencies in the rest of the State of Nagaland.";

(b) in the Second Schedule, after entry 14, the following entry shall be inserted, namely:—

"15. Nagaland.....60 (for the period referred to in clause (2) of article 371A, 46).".

(3) In the Representation of the People Act, 1951, in section 5, in clause (c), the following proviso shall be inserted at the end, namely:—

"Provided that for the period referred to in clause (2) of article 371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.".

(4) The Election Commission shall delimit the assembly constituencies in accordance with the provisions of the Constitution on the basis of the latest census figures, and in doing so the Commission shall have regard to the following provisions, namely:—

(a) all constituencies shall, as far as practicable, consist of geographically compact areas, and in delimiting them, regard shall be had to physical features, existing boundaries of administrative units, facilities of communication, public convenience and linguistic affinities of the people,

(b) all constituencies shall be single-member constituencies, and

(c) the population of each constituency shall not, as far as practicable, be more than six thousand.

(5) For the purpose of assisting the Election Commission in the performance of its functions under this section, the Commission shall associate with itself five persons of whom three shall be elected by the members of the Interim Body established under section 3 of the Nagaland (Transitional Provisions) Regulation, 1961, from among themselves and two shall be nominated by the Central Government:

Provided that none of the said associate members shall have a right to vote or to sign any decision of the Election Commission.

(6) The Election Commission shall—

(a) formulate its proposals in regard to the matters mentioned in sub-section (4) and publish them in the Official Gazette of the State of Assam and in such other manner as the Commission may consider fit, together with a notice inviting objections and suggestions in relation to the proposals and specifying a date on or after which the the proposals will be further considered by it:

(b) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration hold one or more public sittings at such place or places as it may think fit;

(c) after considering all objections and suggestions which may have been received by it before the date so specified determine the matters mentioned in sub-section (4) by one or more final orders and cause such order or orders to be published in the Official Gazette of the State of Assam; and upon such publication the order or orders shall have the full force of law and shall not be called in question in any court;

(d) amend the Delimitation of Parliamentary and Assembly Constituencies Order, 1961, so as to include therein the parliamentary constituency of Nagaland and the assembly constituencies delimited under this section.

[*] Substituted for '46' and 'six seats', respectively by the Legislative Assembly of Nagaland (Change of Representation) Act, 1968 (LXI of 1968), S. 3 (31-12-1968).

12. Rules of Procedure.— The rules as to procedure and conduct of business in force immediately before the appointed day with respect to the Legislative Assembly of Assam shall, until rules are made under clause (1) of article 208, have effect in relation to the Legislative Assembly of Nagaland, subject to such modifications and adaptations as may be made therein by the Speaker thereof.

PART IV
HIGH COURT

13. Common High Court for Assam and Nagaland.— (1) As from the appointed day,—

(a) there shall be a common High Court for the State of Assam and the State of Nagaland* (hereinafter referred to as the common High Court);

(b) the Judges of the High Court of Assam holding office immediately before that day shall, unless they have elected otherwise, become on that day the Judges of the common High Court.

(2) Expenditure in respect of the salaries and allowances of the Judges of the common High Court shall be allocated between the State of Assam and the State of Nagaland in such proportion as the President may by order determine.

[*] This Common High Court has ceased to exist and a new High Court called Gauhati High Court has been created instead which is a Common High Court for the States of Assam, Nagaland, Meghalaya, Manipur and Tripura—See the North-Eastern Area (Reorganisation) Act, 1971 (81 of 1971), S. 28 (21-1-1972). All these five States have ethical, geographical and cultural affinity. Jurisdiction of this Common High Court also extends to the two new Union Territories formed under that Act namely Mizoram and Arunachal Pradesh—See S. 32 ibid.

14. Provisions as to Advocates.— (1) As from the appointed day,—

(a) in the Advocates Act, 1961, in section 3, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

"(b) for the States of Assam and Nagaland and the Union territory of Manipur, to be known as the Bar Council of Assam and Nagaland;";*

(b) the Bar Council of Assam shall be deemed to be the Bar Council of Assam and Nagaland.

(2) Any person who immediately before the appointed day is an advocate entitled to practise in the High Court of Assam shall be entitled to practise as an advocate in the common High Court.

(3) All persons who immediately before the appointed day are advocates on the roll of the Bar Council of Assam shall as from that day become advocates on the roll of the Bar Council of Assam and Nagaland.

(4) The right of audience in the common High Court shall be regulated in accordance with the like principles as, immediately before the appointed day, are in force with respect to the right of audience in the High Court of Assam:

Provided that as between the Advocate-General of Assam and the Advocate-General of Nagaland the right of audience shall be determined with reference to their respective dates of enrolment as advocates.

[°] Now this provision is further amended by the North-Eastern Areas (Reorganisation) Act, 1971. The Bar Council is now for the States of Assam, Nagaland, Meghalaya, Manipur and Tripura—See Act 81 of 1972, S. 34 (24-1-1972).

15. Practice and procedure in common High Court.— Subject to the provisions of this Part, the law in force immediately before the appointed day* with respect to practice and procedure in the High Court of Assam shall, with necessary modifications, apply in relation to the common High Court.

[*] That is 1-12-1963.

16. Custody of Seal of common High Court.— The law in force immediately before the appointed day with respect to the custody of the Seal of the High Court of Assam shall, with necessary modifications, apply with respect to the custody of the Seal of the common High Court.

17. Form of writs and other processes.— The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the High Court of Assam shall, with necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the common High Court.

18. Powers of Judges.— The law in force immediately before the appointed day with respect to the powers of the Chief Justice, single Judges and division courts of the High Court of Assam and with respect to all matters ancillary to the exercise of those powers shall, with necessary modifications, apply in relation to the common High Court.

19. Principal seat of common High Court.*— The principal seat of the common High Court shall, unless otherwise determined by the Chief Justice after consultation with the Governors of Assam and Nagaland, be at the same place as the principal seat of the High Court of Assam immediately before the appointed day.

[°] The principal seat of the new common High Court is Gauhati, with Benches working at Imphal, Agartala and Kohima.

20. Procedure as to appeals to Supreme Court.— The law in force immediately before the appointed day relating to appeals to the Supreme Court from the High Court of Assam and the Judges and division courts thereof shall, with necessary modifications, apply in relation to the common High Court.

21. Pending suits, appeals and proceedings.— All suits, appeals and proceedings, civil, criminal or otherwise, pending in the High Court of Assam immediately before the appointed day shall, on that day, stand removed to the common High Court and the common High Court shall have jurisdiction to hear and determine the same, and the judgments, decrees, sentences and orders of the High Court of Assam delivered, passed or made before the appointed day shall have the same force and effect as if they had been delivered, passed or made by the common High Court.

PART V
FINANCIAL PROVISIONS

22. Authorisation of expenditure pending its sanction by Legislature.— The President may, at any time before the appointed day, authorise such expenditure from the Consolidated Fund of the State of Nagaland as he deems necessary for a period of not more than six months beginning with the appointed day, pending the sanction of such expenditure by the Legislature of the State of Nagaland:

Provided that the Governor of Nagaland may, after the appointed day, authorise such further expenditure as he deems necessary from the Consolidated Fund of the State of Nagaland for any period not extending beyond the said period of six months.

23. Distribution of revenues.— The President shall by order determine the grants-in-aid of the revenues of the State of Nagaland and the share of that State in the Union duties of excise, estate duty and taxes on income and for that purpose amend thereby the relevant provisions of the Union Duties of Excise (Distribution) Act, 1962, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Estate Duty (Distribution) Act, 1962, and the Constitution (Distribution of Revenues) Order, 1962, in such manner as he thinks fit.

24. Property, assets, rights, liabilities and obligations.— (1) All property and assets situated in, or used for, or in connection with the administration of, the Naga Hills-Tuensang Area and vested in the Union immediately before the appointed day (other than any property or assets so vested for purposes of the Union) shall, as from that day, vest in the State of Nagaland:

Provided that the cash balances in the treasuries in the Naga Hills-Tuensang Area immediately before the appointed day shall, as from that day, vest in the State of Nagaland.

(2) All rights, liabilities and obligations of the Central Government, whether arising out of any contract or otherwise, which are, immediately before the appointed day, the rights, liabilities and obligations of the Central Government arising out of or in connection with the administration of the Naga Hills-Tuensang Area shall, as from that day, be the rights, liabilities and obligations of the Government of the State of Nagaland.

25. Arrears of taxes.— The right to recover arrears of any tax or duty (being a tax or duty enumerated in the State List in the Seventh Schedule to the Constitution) which have fallen due in the Naga Hills-Tuensang Area shall pass to the State of Nagaland.

PART VI

Legal and Miscellaneous Provisions

26. Continuance of existing laws and their adaptation.— (1) All laws in force, immediately before the appointed day, in the Naga Hills-Tuensang Area shall continue to be in force in the State of Nagaland until altered, repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of facilitating the application in relation to the State of Nagaland of any law made before the appointed day, the appropriate Government may, within two years from that day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.— In this section, the expression "appropriate Government" means, as respects any law relating to a matter enumerated in the Union List in

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Section 26 — Note 1

(1) Section 26 (2) does not authorise making of adaptation retrospectively. ILR (1967) 19 Assam 293.

the Seventh Schedule to the Constitution, the Central Government; and as respects any other law, the Government of Nagaland.

27. **Power to construe laws.**— Notwithstanding that no provision or insufficient provision has been made under section 26 for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Nagaland, construe the law in such manner not affecting the substance as may be necessary or proper in regard to the matter before the court, tribunal or authority, as the case may be.

28. **Provisions as to continuance of courts and of officers, etc.**— (1) All courts and tribunals and all authorities discharging lawful functions throughout the Naga Hills-Tuensang Area or any part thereof immediately before the appointed day shall, unless their continuance is inconsistent with the provisions of this Act or until other provision is made by a competent Legislature or other competent authority, continue to exercise their respective functions.

(2) Every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the administration of the Naga Hills-Tuensang Area or any part thereof shall, except where by virtue or in consequence of the provisions of this Act such post or office ceases to exist on that day, continue to hold the same post or office in the State of Nagaland, and shall be deemed, as from that day, to have been duly appointed to such post or office by the Government of, or other appropriate authority in, such State.

(3) Nothing in sub-section (2) shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office.

29. **Amendment of Act 37 of 1956.**— As from the appointed day, in section 15 of the States Reorganization Act, 1956, in clause (c), for the words, "and Assam", the words "Assam and Nagaland" shall be substituted.

30. **Effect of provisions of Act inconsistent with other laws.**— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

31. **Power to remove difficulties.**— (1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order*, do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty.

(2) Every order made under this section shall be laid before each House of Parliament.

[*] Three such Orders seem to have been passed so far. They are published in the Gazette of India, 1963, in Pt. II, S. 3 (i), at p. 1900 and ibid Ext., pp. 835 and 836 as G.S.R.s 1620 D/- 7-10-1963; 1847, D/- 30-11-1963 and 1848 D/- 30-11-1963, respectively.

32. **Power to make rules.**— (1) The Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. Repeal.— As from the appointed day*, the Nagaland (Transitional Provisions) Regulation, 1961, shall stand repealed.

[*] That is 1-12-1963.

THE SCHEDULE

[See section 3 (2)]

District	Areas
1. Kohima	The areas which immediately before the 1st day of December 1957, were comprised in the Naga Hills District excluding the areas in Mokokchung district as specified in item No. 2.
2. Mokokchung	The areas which immediately before the 1st day of December, 1957, were comprised in the Mokokchung sub-division of the Naga Hills District.
3. Tuensang	The areas which immediately before the 1st day of December, 1957, were comprised in the Tuensang Frontier Division of the North Agency.

[THE] STATES REORGANIZATION ACT, 1956
(ACT XXXVII OF 1956)

[The text of the Act printed here is as on 30-6-1973.]

CONTENTS

PART I
PRELIMINARY

SECTIONS
1. Short title.
2. Definitions.

PART II
TERRITORIAL CHANGES AND FORMATION OF NEW STATES
3. Transfer of territory from Hyderabad to Andhra and alteration of name.
4. Transfer of territory from Travancore-Cochin to Madras.
5. Formation of Kerala State.
6. Laccadive, Minicoy and Amindivi Islands.
7. Formation of a new Mysore State.
8. Formation of a new Bombay State.
9. Formation of a new Madhya Pradesh State.
10. Formation of a new Rajasthan State.
11. Formation of a new Punjab State.
12. Amendment of the First Schedule to the Constitution.
13. Saving powers of State Governments.

PART III
ZONES AND ZONAL COUNCILS.
14. [Repealed.]
15. Establishment of Zonal Councils.
16. Composition of the Councils.
17. Meetings of the Councils.
18. Power to appoint Committees.
19. Staff of the Council.
20. Office of the Council.
21. Functions of the Councils.
22. Joint meetings of Zonal Councils.

PART IV
REPRESENTATION IN THE LEGISLATURES
The Council of States
23. Amendment of the Fourth Schedule to the Constitution.
24. Allocation of sitting members in the Council of States.
25. Bye-elections to fill vacancies.
26. Term of office of members.
The House of the People
27. Provisions as to existing House.
The Legislative Assembly
28. Changes in composition and allocation of sitting members.
29. Special provision for elections to the Andhra Pradesh Legislative Assembly.
30. Duration of Legislative Assemblies.
31. Speakers and Deputy Speakers.
32. Rules of procedure.
The Legislative Councils
33. Madhya Pradesh Legislative Council.
34. Bombay Legislative Council.
35. Madras Legislative Council.
36. Mysore Legislative Council.
37. Punjab Legislative Council.
38. Chairman and Deputy Chairman.
39. Rules of procedure.
Delimitation of Constituencies
40. Allocation of seats in the House of the People and assignment of seats to State Legislative Assemblies.

SECTIONS
41. Modification of the Scheduled Castes and Scheduled Tribes Orders.
42. Determination of population of Scheduled Castes and Scheduled Tribes.
43. Constitution of Delimitation Commission.
44. Duties of the Commission.
45. Associate members.
46. Casual vacancies.
47. Procedure as to delimitation.
48. Special provision as to certain elections.

PART V
HIGH COURTS

49. High Courts for the new States.
50. Abolition of certain Courts.
51. Principal seat and other places of sitting of High Courts for new States.
52. Jurisdiction of High Courts for new States.
53. [Repealed.]
54. Practice and procedure.
55. Custody of seal of the High Court.
56. Form of writs and other processes.
57. Powers of Judges.
58. Procedure as to appeals to the Supreme Court.
59. Transfer of proceedings to Bombay High Court.
60. Extension of jurisdiction of, and transfer of proceedings to Kerala High Court.
61. Transfer of proceedings to Madhya Pradesh High Court.
62. Transfer of proceedings to Mysore High Court.
63. Transfer of proceedings to Punjab High Court.
64. Transfer of proceedings to Rajasthan High Court.
65. High Court of Andhra Pradesh.
66. High Court for the areas added to Madras.
67. Right to appear or act in proceedings transferred to other High Courts.
68. Interpretation.
69. Savings.

PART VI
AUTHORISATION OF EXPENDITURE

70. Authorisation of expenditure of new States.
71. Appropriation of moneys for expenditure in transferred territories under existing Appropriation Acts.
72. Reports relating to the accounts of certain States.
73. Allowances and privileges of Governors of certain States.
74. Distribution of revenues.

PART VII
APPORTIONMENT OF ASSETS AND LIABILITIES OF CERTAIN PART A AND PART B STATES

75. Application of part.
76. Land and goods.
77. Treasury and bank balances.
78. Arrears of taxes.
79. Right to recover loans and advances.
80. Credits in certain funds.
81. Assets and liabilities of State undertakings.
82. Public debt.
83. Refund of taxes collected in excess.
84. Deposits.
85. Provident funds.
86. Pensions.
87. Contracts.
88. Liability in respect of actionable wrong.
89. Liability as guarantor of co-operative society.
90. Items in suspense.
91. Residuary provision.
92. Power of the Central Government to order allocation or adjustment in certain cases.
93. Certain expenditure to be charged on the Consolidated Fund.

PART VIII
APPORTIONMENT OF CERTAIN ASSETS AND LIABILITIES OF THE UNION

94. Definitions.
95. Passing of certain assets and liabilities of the Union to successor States.
96. Arrears of taxes.
97. Loans and advances.
98. Debts due to Central Government.
99. Provident fund.
100. Pensions.
101. Contracts.

PART IX
PROVISIONS AS TO CERTAIN CORPORATIONS AND INTER-STATE AGREEMENTS AND ARRANGEMENTS

102. Provision as to certain State Financial Corporations.
103. Provisions as to the Madras Industrial Investment Corporation.
104. Amendment of Act 2 of 1934.
105. Amendment of Act 6 of 1942.
106. Provision as to certain State Electricity Boards and apportionment of their assets and liabilities.
107. Continuance of arrangements in regard to generation and supply of electric power and supply of water.
108. Continuance of agreements and arrangements relating to certain irrigation, power or multipurpose projects.
109. General provision as to statutory corporations.
110. Temporary provisions as to the continuance of certain existing road transport permits.
111. Special provision relating to retrenchment compensation in certain cases.
112. Provision as to the Devaswom Surplus Fund of Travancore.

SECTIONS
113. Continuance of facilities in certain State institutions.

PART X
PROVISIONS AS TO SERVICES
114. Provisions relating to All-India Services.
115. Provisions relating to other services.
116. Provision as to continuance of officers in the same posts.
117. Power of Central Government to give directions.
118. Provisions as to State Public Service Commissions.

PART XI
LEGAL AND MISCELLANEOUS PROVISIONS
119. Territorial extent of laws.
120. Power to adapt laws.
121. Power to construe laws.
122. Power to name authorities, etc., for exercising statutory functions.
123. Legal proceedings.
124. Right of pleaders to practise in certain Courts.
125. Provisions as to certain pending proceedings.
126. [Repealed.]
127. Effect of the provisions of the Act inconsistent with other laws.
128. Power to remove difficulties.
129. Power to make rules.
130. Repeal of Act 49 of 1951.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE—Modifications in the Delimitation of Council Constituencies (Madras) Order, 1951.

THE THIRD SCHEDULE—Allocation of Seats in the House of the People and Assignment of Seats to State Legislative Assemblies.

THE FOURTH SCHEDULE—I. Modified Form of S. 3 of the Union Duties of Excise (Distribution) Act, 1953.

II. Modified Form of Paragraphs 3 and 5 of the Constitution (Distribution of Revenues) Order, 1953.

THE FIFTH SCHEDULE — Apportionment of Liability in respect of Pensions.

THE SIXTH SCHEDULE

STATEMENT OF OBJECTS AND REASONS

"The States of India, as they exist today, have been formed largely as a result of historical accidents and circumstances, and there has, therefore, been a demand for the reorganisation of the component units of the Indian Union on a more rational basis, after taking into account not only the growing importance of the regional languages, but also financial, economic and administrative considerations. The States Reorganisation Commission was accordingly constituted in December, 1953, to investigate the conditions of this problem, the historical background, the existing situation, and all other relevant factors, and to recommend the principles which could be considered appropriate as well as the broad lines on which particular States should be reorganized. The Commission reported on 30th September, 1955. The proposals contained in the report and the matters connected therewith have received attention all over the country and have been discussed in Parliament and State Legislatures. This Bill seeks to give effect to the scheme of reorganisation which has emerged as a result of these discussions.

The main features of the reorganisation proposed are the abolition of the existing constitutional distinction between Part A, Part B and Part C States, the establishment of two categories for the component units of the Union, to be called States and Union territories, and the abolition of the institution of the Rajpramukh consequent on the disappearance of the Part B States. In this Bill, it is proposed to provide for the transfer of the Telangana area of Hyderabad to Andhra and the remaining of the enlarged State the transfer of certain areas from Travancore-Cochin to Madras, the forming of the new States of Kerala, Mysore, Maharashtra and Gujarat,* the merger of Madhya Bharat, Vindhya Pradesh and Bhopal with the Mahakosal area of Madhya Pradesh, the merger of Ajmer with Rajasthan and the merger of the Patiala and East Punjab States Union with Punjab,§ Bombay,† Delhi, Himachal Pradesh, Manipur, Tripura and the Andaman and Nicobar Islands will become Union territories. The Laccadive, Minicoy and Amindivi islands will also be treated as a Union territory. In view of the proposal for the amalgamation of Bihar and West Bengal which is under consideration, no provision has been made in this Bill for any territorial adjustments‡ between these two States.

The Bill makes the necessary supplemental and incidental provisions relating to representation in Parliament and in the State Legislatures, establishment of High

Courts, apportionment of assets and liabilities and other matters. It also makes provision for the setting up of five Zonal Councils which will be advisory bodies, competent to discuss matters of common interest, particularly in the field of economic and social planning.

As required by the proviso to Article 3 of the Constitution, this Bill was referred by the President on the 16th March, 1956, to the Legislatures of the 12 Part A and Part B States affected by the scheme of reorganisation, and they were given one month's time for expressing their views. Except in the case of Travancore-Cochin, whose Legislative Assembly has since been dissolved by proclamation of the President, the views of the Legislatures of all the other States have been received and will be placed before Parliament for its consideration."—Gaz. of Ind., 1956, Extra., Pt. II-Sec. 2, page 278.

[°] However, the formation of the States of Gujarat and Maharashtra was completed, not by any provisions of this Act, but under the provisions of the Bombay Reorganization Act, 1960 (XI of 1960).

[†] Bombay did not become a Union territory.

[‡] This is done by the Bihar and West Bengal (Transfer of Territories) Act, 1956 (XL of 1956).

[§] Punjab is now divided into States of Punjab and Haryana and the Union territory of Chandigarh.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Adapted by 1 A.L.O., 1956.

—Amended by Acts LXVII of 1956; XI of 1960; XVII of 1962; XX of 1963; XXXI of 1966; LV of 1969; LIII of 1970; LXXXI of 1971.

—Repealed in part by Acts XXIV of 1958; XXV of 1961.

COGNATE ACTS AND PROVISIONS

1. Andhra State Act, XXX of 1953.
2. Andhra Pradesh and Madras (Alteration of Boundaries) Act, LVI of 1959.
3. Assam (Alteration of Boundaries) Act, XLVII of 1951.
4. Bihar and West Bengal (Transfer of Territories) Act, XL of 1956.
5. Bombay Reorganisation Act, XI of 1960.
6. Constitution of India, Arts. 3, 4, 371, 372-A; Sch. I.
7. Dadra and Nagar Haveli Act, XXXV of 1961.

7A. Goa, Daman and Diu (Administration) Act, I of 1962.

8. Himachal Pradesh and Bilaspur (New State) Act, XXXII of 1954.
9. Rajasthan and Madhya Pradesh (Transfer of Territories) Act, XLVII of 1959.
10. Chandranagar (Merger) Act, XXXVI of 1954.
11. State of Nagaland Act, XXVII of 1962.
12. Punjab Reorganisation Act, XXXI of 1966.
13. Bihar and Uttar Pradesh (Alteration of Boundaries) Act, XXIV of 1968.
14. Andhra Pradesh and Mysore (Transfer of Territory) Act, XXXVI of 1968.
15. Assam Reorganisation (Meghalaya) Act, LV of 1969.
16. State of Himachal Pradesh Act, LIII of 1970.
17. North-Eastern Areas Reorganisation Act, LXXXI of 1971.

[THE] STATES REORGANIZATION ACT, 1956
(ACT XXXVII OF 1956)°

[31st August, 1956]

An Act to provide for the reorganization of the States of India and for matters connected therewith.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., Extra., Pt. II-Sec. 2, p. 278; for Joint Committee Report, see ibid, dated 30-7-1956.

The Act has been extended to the Union territories of Goa, Daman and Diu, and Pondicherry, with effect from 13-5-1963, by the Government of the Union Territories Act, 1963 (20 of 1963), Section 57.

PART I
PRELIMINARY

1. Short title.—This Act may be called THE STATES REORGANIZATION ACT, 1956.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 1st day of November, 1956;

(b) "article" means an article of the Constitution;

(c) "assembly constituency", "council constituency" and "parliamentary constituency" have the same meanings as in the Representation of the People Act, 1950;

(d) "corresponding new State" means, in relation to the existing States of Bombay, Madhya Pradesh, Mysore, Punjab or Rajasthan, the new State with the same name, and in relation to the existing State of Travancore-Cochin, the new State of Kerala;

(e) "corresponding State" means, in relation to the new States of Bombay, Madhya Pradesh, Mysore, Punjab or Rajasthan, the existing State with the same name, and in relation to the new State of Kerala, the existing State of Travancore-Cochin;

(f) "Election Commission" means the Election Commission appointed by the President under Article 324;

(g) "existing State" means a State specified in the First Schedule to the Constitution at the commencement of this Act;

Section 1 — Note 1

(1) Looking to the aim, scope and the object of the Act, the intention of Parliament clearly appears to be to provide for a solution of all problems arising out of the States Reorganisation. Effect can only be given to this intention of Parliament by liberally construing its provisions so far as the language used would permit. AIR 1959 Bom 363 (365) = ILR (1959) Bom 1267 (DB).

(2) While considering the validity of the States Reorganization Act the opinions entertained by the Prime Minister, the views expressed by him. and the discussions that took place at various stages in the passing of the Act pertain to the domain of politics and a Court of law has no concern with them. AIR 1967 Andh Pra 734 (735) = ILR (1957) Andh Pra 345 (DB).

(3) Since assent of the President was given to the Act, the Act cannot, in view of Article 255. be questioned on the ground of want of previous recommendation of the President. AIR 1957 Andh Pra 734 (737) = ILR (1957) Andh Pra 345 (DB).

Section 2 — Note 1

(1) Integration of Ajmer State in State of Rajasthan — Notifications issued prior to appointed day i.e. 1-11-1956 continue to be valid even thereafter by virtue of S. 125 of States Reorganization Act 1956. AIR 1962 Raj 218 (219) (DB).

(2) The day for establishing a Legislative Council is to be appointed by the President and the appointment of such day has nothing to do with the definition of "appointed day" in Section 2 of the Act. AIR 1959 Madh Pra 353 (356) (DB).

(3) The effect of Sections 2 (g), 3, 7 and 8 of the Act is that part of the existing State of Hyderabad i.e., the State of Hyderabad existing on 31st August, 1956 were carved out either to increase the area of another State or to form new States and thereafter i.e. on 1-11-1956 the Hyderabad State was deleted from the first Schedule. AIR 1957 Andh Pra 734 (737) = ILR (1957) Andh Pra 345 (DB).

(4) The law contained in Clause (h) of Section 2 shows that notification having the force of law would be law within the meaning of that word as occurring in Section 120. 1971 Mah LJ 463 (471) = 1971 Lab IC 912 (Bom).

(5) Notification of Government of Travancore-Cochin of 20-4-1952 is a law within the ambit of that definition in Section 2 (h). AIR 1958 Ker 96 (97).

(6) Notification issued under G. O. Ms. No. 1861 by Madras Government under Section 20, Food Adulteration Act — **Held,** amounted to law and survived in Malabar District after its integration with Kerala. 1962 (1) Cri LJ 647 (649) (Ker).

(7) The present State of Madhya Pradesh is the principal successor State of the old or the existing State of Madhya Pradesh. AIR 1970 Bom 117 (120) = 72 Bom LR 258.

(8) Present State of Maharashtra is the successor State of the existing State of Madhya Pradesh. An employee of Government of M. P. who retired from service before 1-11-56 and settled in Nagpur and draws his pension from Nagpur Treasury would not be able to claim from the present Maharashtra State the increase in pension granted by the present M. P. State after 1-11-56 on the ground that Maharashtra is the successor State of M. P. State. AIR 1970 Bom 117 (121) = 72 Bom LR 258.

(h) "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or in any part of the territory of India;

(i) "new State" means a State formed by the provisions of Part II;

(j) "notified order" means an order published in the Official Gazette;

(k) "population ratio", in relation to the successor State, of an existing State, means such ratio as the Central Government may by notified order specify to be the ratio in which the population of that existing State as ascertained at the last census is distributed territorially among the several successor States by virtue of the provisions of Part II;

OBJECTS AND REASONS

Clause (k).—"The expression 'population ratio' is used only in relation to an existing State which has two or more successor States as defined in clause (o). Thus, the existing State of Hyderabad will have three successor States, namely, the States of Andhra-Telangana, Maharashtra and Mysore in relation to that existing State, the population ratio will be the ratio in which the census population of that State is distributed territorially among those three successor States, or to express it in symbols, it will be A, B, C, where A is the census population of the territory transferred from Hyderabad to Andhra-Telangana under clause 3 [S. 3], B is the census population of the territory transferred from Hyderabad to Maharashtra under clause 9 (1) (b) [now S. 8 (1) (b)] and C is the census population of the territory transferred from Hyderabad to Mysore under clause 7 (1) (c) [S. 7]. The definition requires the Central Government to ascertain in due course, the population ratio in all relevant cases and notify them in the Official Gazette."—S.O.R.

(l) "prescribed" means prescribed by rules made under this Act;

(m) "principal successor State" means—

(i) in relation to the existing State of Bombay, Madhya Pradesh, Madras or Rajasthan the State with the same name; and

(ii) in relation to the existing States of Hyderabad, Madhya Bharat and Travancore-Cochin the States of Andhra Pradesh, Madhya Pradesh and Kerala, respectively;

(n) "sitting member" in relation to either House of Parliament or of the Legislature of a State means a person who, immediately before the appointed day, is a member of that House;

(o) "successor State", in relation to an existing State, means any State to which the whole or any part of the territories of that existing State is transferred by the provisions of Part II, and includes in relation to the existing State of Madras, also that State as territorially altered by the said provisions and the Union;

(p) "transferred territory" means any territory transferred from an existing State to another existing State or to a new State by the provisions of Part II;

(q) "treasury" includes a sub-treasury; and

(r) any reference to a district, taluk, tahsil or other territorial division of a State shall be construed as a reference to the area comprised within that territorial division on the 1st day of July, 1956.

PART II

[**Note.**—"The territorial changes proposed in this Part fall into three groups. First, there are the transfers of territories from Hyderabad to Andhra-Telangana under clause 3 and from Travancore-Cochin to Madras under clause 4. Secondly, there is the formation of seven [now, six] "new" States. Thirdly, two centrally administered areas, namely, Bombay and the Laccadive, Minicoy and Amindivi Islands, are formed under clauses 8 and 6, respectively. [However, as the Act now stands enacted, Bombay was not put under central administration.] All these changes are to take place as from the appointed day.

In sub-clause (2) of each of the clauses 3, 5, 7, 9, 10, 11 and 12 and in clause 4 [now sections 3, 5, 7, 8, 9, 10 and 4], provision is made for constituting

certain transferred territories either as separate districts or as parts of other specified districts in the States to which they will stand transferred on the appointed day. This is in order to facilitate the making of suitable administrative arrangements on and from that day without a break. Clause 14 [now S. 13] expressly saves the power of the State Government to alter thereafter the name, extent and boundaries of any district or other territorial division in the State."—S.O.R.

Section 12 of the Act, which amends the First Schedule to the Constitution, was introduced by the Joint Committee. The Committee in its Report observed: "This clause has been inserted as under Article 4 [of the Constitution] it is necessary to amend the First Schedule to the Constitution in order to give effect to the provisions of the Bill. In the amended First Schedule the extent of the territories of the States as they will be after reorganisation has been set out." This section had retained the division of the States into three categories as Part A, Part B and Part C States. [This division no longer subsists. India now has only States and the Union territories.] But, as the reorganisation scheme involved not only the establishment of new States and alteration in the area and boundaries of the existing States, but also the abolition of the three categories, and the classification of certain areas as Union territories, Article 1 of the Constitution was suitably amended and the First Schedule thereto was completely revised by the Constitution (Seventh Amendment) Act, 1956.]

TERRITORIAL CHANGES AND FORMATION OF NEW STATES

3. Transfer of territory from Hyderabad to Andhra and alteration of name.—(1) As from the appointed day, there shall be added to the State of Andhra the territories comprised in—

(a) the districts of Hyderabad, Medak, Nizamabad, Karimnagar, Warangal, Khammam, Nalgonda and Mahbubnagar;

(b) Alampur and Gadwal talukas of Raichur district and Kodangal taluk of Gulbarga district;

(c) Tandur taluk of Gulbarga district;

(d) Zahirabad taluk (except Nirna circle), Nyalkal circle of Bidar taluk and Narayankhed taluk of Bidar district;

(e) Bichkonda and Jukkal circles of Deglur taluk of Nanded district;

(f) Mudhol, Bhainsa and Kuber circles of Mudhol taluk of Nanded district; and

(g) Adilabad district except Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk;

and thereupon the said territories shall cease to form part of the existing State of Hyderabad and the State of Andhra shall be known as the State of Andhra Pradesh.

(2) The territories referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) shall be included in, and become part of, Mahbubnagar, Hyderabad, Medak, Nizamabad and Adilabad districts, respectively, in the State of Andhra Pradesh.

4. Transfer of territory from Travancore-Cochin to Madras.—As from the appointed day, there shall be added to the State of Madras the territories comprised in the Agastheeswaram, Thovala, Kalkulam and Vilavancode taluks of Trivandrum district and the Shencottah taluk of Quilon district; and thereupon—

(a) the said territories shall cease to form part of the existing State of Travancore-Cochin;

(b) the territories comprised in the Agastheeswaram, Thovala, Kalkulam and Vilavancode taluks shall form a separate district to be known as Kanya Kumari district in the State of Madras; and

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Section 3 — Note 1

(1) The effect of Sections 2 (g), 3, 7 and 8 of the Act is that parts of the existing State of Hyderabad i.e. the State of Hyderabad existing on 31-8-1956, were carved out either to increase the area of another State or to form new States. AIR 1957 Andh Pra 734 (737) = ILR (1957) Andh Pra 345 (DB).

(c) the territories comprised in the Shencottah taluk shall be included in, and become part of Tirunelveli district in the State of Madras.*

[*] Madras is now known as Tamil Nadu—See Act 53 of 1968.

5. Formation of Kerala State.—(1) As from the appointed day, there shall be formed a new State to be known as the State of Kerala comprising the following territories, namely:—

(a) the territories of the existing State of Travancore-Cochin, excluding the territories transferred to the State of Madras by Section 4; and

(b) the territories comprised in—

(i) Malabar district, excluding the islands of Laccadive and Minicoy, and

(ii) Kasaragod taluk of South Kanara district;

and thereupon the said territories shall cease to form part of the States of Travancore-Cochin and Madras, respectively.

(2) The territories specified in clause (b) of sub-section (1) shall form a separate district to be known as Malabar district in the State of Kerala.

6. Laccadive, Minicoy and Amindivi Islands.—As from the appointed day,* there shall be formed a Union territory to be known as the Laccadive, Minicoy and Amindivi Islands comprising the Laccadive and Minicoy Islands in the Malabar district and the Amindivi Islands in the South Kanara district, and thereupon the said Islands shall cease to form part of the existing State of Madras.

[*] That is, 1-11-1956.

7. Formation of a new Mysore State.—(1) As from the appointed day, there shall be formed a new *[*] State to be known as the State of Mysore comprising the following territories namely:

(a) the territories of the existing State of Mysore;

(b) Belgaum district except Chandgad taluka and Bijapur, Dharwar and Kanara districts, in the existing State of Bombay;

(c) Gulbarga district except Kodangal and Tandur taluks, Raichur district except Alampur and Gadwal taluks, and Bidar district except Ahmadpur, Nilanga and Udgir taluks and the portions specified in clause (d) of sub-section (1) of Section 3, in the existing State of Hyderabad.

(d) South Kanara district except Kasaragod taluk and Amindivi Islands, and Kollegal taluk of Coimbatore district, in the State of Madras; and

(e) the territories of the existing State of Coorg;

and thereupon the said territories shall cease to form part of the said existing States of Mysore, Bombay, Hyderabad, Madras and Coorg, respectively.

(2) The territory comprised in the existing State of Coorg shall form a separate district to be known as Coorg district and the said Kollegal taluk shall be included in, and become part of, Mysore district, in the new State of Mysore.

[*] The word and letter "Part A" were omitted by 1 A.L.O., 1956 (1-11-1956).

8. Formation of a new Bombay State.—(1) As from the appointed day, there shall be formed a new *[*] State to be known as the State of Bombay comprising the following territories, namely:—

(a) the territories of the existing State of Bombay, excluding—

(i) Bijapur, Dharwar and Kanara Districts and Belgaum district except Chandgod taluka, and

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Section 5 — Note 1

(1) Formation of Malappuram District with a Muslim majority by State of Kerala — Action did not offend either Section 5 (2) of the Act or Articles 14, 25 or 26 of the Constitution — State could, in exercise of its executive power, form new districts for administrative purposes. 1969 Ker LT 693 (695).

Section 7 — Note 1

(1) The effect of Sections 2 (g), 3, 7 and 8 of the Act is that parts of the existing State of Hyderabad i.e. the State of Hyderabad existing on 31-8-1956, were carved out either to increase the area of another State or to form new States. AIR 1957 Andh Pra 734 (737) = ILR (1957) Andh Pra 345 (DB).

Section 8 — Note 1

(1) The effect of Ss. 8, 2 (g), 3 and 7 of the Act is that parts of the existing State of Hyderabad, i.e. the State of Hyderabad existing on 31-8-1956, were carved out either to increase the area of another State or to

(ii) Abu Road taluka, Banaskantha district;

(b) Aurangabad, Parbhani, Bhir and Osmanabad districts, Ahmadpur, Nilanga and Udgir talukas of Bidar district, Nanded district (except Bichkonda and Jukkal circles of Deglur taluk and Mudhol, Bhainsa and Kuber circles of Mudhol taluk) and Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk of Adilabad district, in the existing State of Hyderabad;

(c) Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda districts in the existing State of Madhya Pradesh;

(d) the territories of the existing State of Saurashtra and

(e) the territories of the existing State of Kutch;

and thereupon the said territories shall cease to form part of the existing States of Bombay, Hyderabad, Madhya Pradesh, Saurashtra and Kutch, respectively.

(2) The said Chandgad taluk shall be included in, and become part of Kolhapur district, the said Ahmadpur, Nilanga and Udgir taluks shall be included in, and become part of, Osmanabad district, the said Islapur circle of Boath taluk, Kinwat taluk and Rajura taluk shall be included in, and become part of, Nanded district and the territories comprised in the existing State of Kutch shall form a separate district to be known as Kutch district, in the new State of Bombay.†

[*] The word and letter "Part A" were omitted by 1 A.L.O., 1956 (1-11-1956).

[†] Bombay has been divided into the States of Gujarat and Maharashtra under Act XI of 1960 (1-5-1960).

9. Formation of a new Madhya Pradesh State.—(1) As from the appointed day, there shall be formed a new *[*] State to be known as State of Madhya Pradesh comprising the following territories, namely:—

(a) the territories of the existing State of Madhya Pradesh, except the districts mentioned in clause (c) of sub-section (1) of section 8;

(b) the territories of the existing State of Madhya Bharat, except Sunel tappa of Bhanpura tahsil of Mandsaur district;

(c) Sironj sub-division of Kotah district in the existing State of Rajasthan;

(d) the territories of the existing State of Bhopal; and

(e) the territories of the existing State of Vindhya Pradesh;

and thereupon the said territories shall cease to form part of the existing States of Madhya Pradesh, Madhya Bharat, Rajasthan, Bhopal and Vindhya Pradesh, respectively.

(2) The said Sironj sub-division shall be included in, and become part of, Bhilsa district in the new State of Madhya Pradesh.

[*] The word and letter "Part A" were omitted by 1 A.L.O., 1956 (1-11-1956).

10. Formation of a new Rajasthan State.— (1) As from the appointed day, there shall be formed a new *[*] State to be known as the State of Rajasthan comprising the following territories, namely;

(a) the territories of the existing State of Rajasthan, except Sironj sub-division of Kotah district;

(b) the territories of the existing State of Ajmer;

(c) Abu Road taluka of Banaskantha district in the existing State of Bombay; and

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Section 8 — Note 1 (contd.)

form new States. AIR 1957 Andh Pra 734 (737) = ILR (1957) Andh Pra 345 (DB).

(2) Though the formation of a new composite State of Bombay as in Section 8 of the Act was a substantial modification of the original proposal of three units contained in the Bill, that does not mean that it was not a proper amendment of the original proposal. The contention that the formation of a new Bombay State as envisaged in Section 8 of the Act was so completely divorced from the proposal contained in the Bill that it was in reality a new bill and therefore a fresh reference was necessary cannot be accepted. **AIR 1960 SC 51 (55, 56) = (1960) 1 SCR 605.**

(3) The district of Nagpur came to be included in the then State of Bombay for the first time by reason of the provisions in Section 8 (1) (c) of the States Reorganization Act. 1956. 1971 Mah LJ 468 (471) = 1971 Lab IC 912 (Bom).

(d) Sunel tappa of Bhanpura tahsil of Mandsaur district in the existing State of Madhya Bharat;

and thereupon the said territories shall cease to form part of the said States of Rajasthan, Ajmer, Bombay and Madhya Bharat, respectively.

(2) The territories comprised in the existing State of Ajmer shall form a separate district to be known as Ajmer district, and the territories referred to in clauses (c) and (d) of sub-section (1) shall be included in, and become part of, Sirohi and Jhalawar districts, respectively, in the new State of Rajasthan.

[*] The word and letter "Part A" were omitted by 1 A.L.O., 1956 (1-11-1956).

11. Formation of a new Punjab State.—As from the appointed day, there shall be formed a new *[*] State to be known as the State of Punjab comprising the following territories, namely:—

(a) the territories of the existing State of Punjab;† and

(b) the territories of the existing State of Patiala and East Punjab States Union;

and thereupon the said territories shall cease to form part of the said existing States of Punjab and Patiala and East Punjab States Union, respectively.

[*] The word and letter "Part A" were omitted by 1 A.L.O., 1956 (1-11-1956).

[†] Punjab is now divided into the States of Haryana and Punjab and the Union territory of Chandigarh, part of Punjab having been added to the Union territory of Himachal Pradesh (Himachal Pradesh is now a State)—See Act 31 of 1966 (1-11-1966).

°**12. Amendment of the First Schedule to the Constitution.**—As from the appointed day, in the First Schedule to the Constitution, for Part A, Part B and Part C. the following Parts shall be substituted, namely:—

"PART A

Name	Territories
1 ANDHRA PRADESH	The territories specified in sub-section (1) of Section 3 of the Andhra State Act, 1953, and the territories specified in sub-section (1) of Section 3 of the States Reorganization Act, 1956.
2. ASSAM	The territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas, but excluding the territories specified in the Schedule to the Assam (Alteration of Boundaries) Act, 1951.
3. BIHAR	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Bihar or were being administered as if they formed part of that Province.
4. BOMBAY	The territories specified in sub-section (1) of Section 8 of the States Reorganization Act, 1956.
5. KERALA	The territories specified in sub-section (1) of Section 5 of the States Reorganization Act, 1956.
6. MADHYA PRADESH	The territories specified in sub-section (1) of Sec. 9 of the States Reorganization Act, 1956.
7. MADRAS	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Madras or were being administered as if they formed part of that Province and the territories specified in Section 4 of the States Reorganization Act, 1956, but excluding the territories specified in sub-section (1) of Section 3 and sub-section (1) of Section 4 of the Andhra State Act, 1953, and the territories specified in clause (b) of sub-section (1) of Section 5, Section 6 and clause (d) of sub-section (1) of Section 7 of the States Reorganization Act, 1956.
8. MYSORE	The territories specified in sub-section (1) of Section 7 of the States Reorganization Act, 1956.
9. ORISSA	The territories which immediately before the commencement of this Constitution were either comprised in the Province of Orissa or were being administered as if they formed part of that Province.

10. PUNJAB — The territories specified in Section 11 of the States Reorganization Act, 1956.

11. RAJASTHAN — The territories specified in Section 10 of the States Reorganization Act, 1956.

12. UTTAR PRADESH — The territories which immediately before the commencement of this Constitution were either comprised in the Province known as the United Provinces or were being administered as if they formed part of that Province.

13. WEST BENGAL — The territories which immediately before the commencement of this Constitution were either comprised in the Province of West Bengal or were being administered as if they formed part of that Province and the territory of Chandernagore as defined in clause (c) of Section 2 of the Chandernagore (Merger) Act, 1954.

PART B

Name	Territory
1. JAMMU AND KASHMIR	The territory which immediately before the commencement of this Constitution was comprised in the Indian State of Jammu and Kashmir.

PART C

Name	Territories
1. DELHI	The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Delhi.
2. HIMACHAL PRADESH	The territories which immediately before the commencement of the Himachal Pradesh and Bilaspur (New State) Act, 1954, were comprised in the States of Himachal Pradesh and Bilaspur.
3. MANIPUR	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur.
4. TRIPURA	The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Tripura.
5. THE LACCADIVE, MINICOY AND AMINDIVI ISLANDS	The territory specified in Section 6 of the States Reorganization Act, 1956."

Note.—For the First Schedule, as subsequently amended, see the First Schedule given in the Constitution.

[°] Section 12 is now of only historical importance. As the three categories of the States mentioned in this section have been abolished, the First Schedule to the Constitution of India has been completely revised by the Constitution (Seventh Amendment) Act, 1956, which came into force with effect from 1st November, 1956. Constitution of India. Schedule I, as substituted by this Act, has further been amended by Acts 47 and 56 of 1959; XI of 1960; 64 of 1960; 27 of 1962; 20 of 1963; 31 of 1966; 55 of 1969; 53 of 1970; 81 of 1971; 83 of 1971; and the Constitution, Ninth, Tenth, Twelfth and Fourteenth Amendment Acts.

13. Saving powers of State Governments.—Nothing in the foregoing provisions of this Part shall be deemed to affect the power of a State Government to alter after the appointed day the name, extent and boundaries of any district or division in the State.

Section 13 — Note 1

(1) Section 13 recognises that the State has power to constitute any district, alter its boundaries, change its name or its extent. That is a power ancillary to various entries in the State list. It cannot therefore be said that the power vests in the Central Government and not in the State. ILR (1970) Andh Pra 1075 (1086).

PART III

ZONES AND ZONAL COUNCILS

14. Definitions.—[Omitted by 1 A.L.O., 1956 (1-11-1956).]

15. Establishment of Zonal Councils.—As from the appointed day, there shall be a Zonal Council for each of the following five zones, namely:—

(a) the Nothern Zone, comprising the States of *[Haryana, *[Punjab, Himachal Pradesh,]] Rajasthan and Jammu and Kashmir and the †[[Union territories] of Delhi and Chandigarh;]

(b) the Central Zone, comprising the States of Uttar Pradesh and Madhya Pradesh;

‡[(c) the Eastern Zone, comprising the States of Bihar, West Bengal and Orissa;]

(d) the Western Zone, comprising the States of §[Gujarat and Maharashtra] *†[and the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu;] and

(e) the Southern Zone, comprising the States of Andhra Pradesh, *‡[*§[Tamil Nadu], Mysore and Kerala] *†[and the Union territory of Pondicherry.]]

[*] Substituted for 'Punjab' by Act 31 of 1966, Section 86 (1-11-1956) and then for 'Punjab' by Act 53 of 1970, Section 47 (25-1-1971).

[†] This has been so substituted by Acts 31 of 1966, Section 86 and 53 of 1970, Section 47, words "Union territories" having been earlier substituted by 1 A.L.O., 1956, for "Part C States".

[‡] Substituted by Act 81 of 1971, Section 74 (21-1-1972) for former clause (c) which was amended by Act 27 of 1962, Section 79.

[§] Substituted for "Bombay and Mysore" by the Bombay Reorganization Act, 1960 (XI of 1960), Section 86 (25-4-1960).

[*†] Inserted after 'Maharashtra and Kerala' by Act 20 of 1963, Section 57 and Second Schedule.

[*‡] Substituted for 'Madras and Kerala' by Act XI of 1960, Section 86 (1-5-1960).

[*§] Substituted for 'Madras' by G.S.R. 112 published in Gaz. of Ind., 1970, Pt. II, Sec. 3 (i), Extra., p. 19.

OBJECTS AND REASONS

"Section 15 divides the States and Union territories, as reorganised (excluding the Andaman and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands) into five zones and establishes a permanent Zonal Council for each of them. Section 16 provides for the composition of the Zonal Councils and Sections 17 and 18 provide broadly for their procedure. Each Council will have a permanent secretariat located at such place within the zone as the Council may determine. The functions of a Council are indicated in Section 21."—See S.O.R.

16. Composition of the Councils.—(1) The Zonal Council for each zone shall consist of the following members, namely:—

(a) a Union Minister to be nominated by the President;

(b) the Chief Minister of each of the States included in the zone and two other Ministers of each such State to be nominated by the Sadar-i-Riyasat, in the case of Jammu and Kashmir, and by the Governor, in any other case, and if there is no Council of Ministers in any such State three members from that State to be nominated by the President;

(c) where any °[Union territory] is included in the zone, not more than two members from each †[such territory] to be nominated by the President:

‡[(d) * * * * *]

(2) The Union Minister nominated under clause (a) of sub-section (1) to a Zonal Council shall be its Chairman.

(3) The Chief Ministers of the States included in each zone shall act as Vice-Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time:

Provided that, if during that period there is no Council of Ministers in the State concerned, such member from that State as the President may nominate in this behalf shall act as Vice-Chairman of the Zonal Council.

(4) The Zonal Council for each zone shall have the following persons as Advisers to assist the Council in the performance of its duties, namely:—

(a) one person nominated by the Planning Commission;

(b) the Chief Secretary to the Government of each of the States included in the Zone; and

(c) the Development Commissioner or any other officer nominated by the Government of each of the States included in the Zone.

(5) Every Adviser to a Zonal Council shall have the right to take part in the discussions of the Council or of any Committee thereof of which he may be named a member but shall not have a right to vote at a meeting of the Council or of any such Committee.

[°] Substituted for "Part C State" by 1 A.L.O., 1956 (1-11-1956).

[†] Substituted for "Such State", ibid.

[‡] Clause (d) omitted by Act 81 of 1971, Section 74 (21-1-1972). Earlier the said clause was substituted by Act 55 of 1969, Section 76. The clause is omitted because a North-Eastern Council has been formed for areas comprising the States of Assam, Nagaland, Meghalaya, Manipur and Tripura and the Union territories of Mizoram and Arunachal Pradesh by the North-Eastern Council Act, 1971 (84 of 1971). Earlier the said Council, as formed under Act 26 of 1970 (repealed by Act 84 of 1971), comprised the States of Assam and Nagaland and the autonomous State of Meghalaya (as it then was).

17. Meetings of the Councils.—(1) Each Zonal Council[*] shall meet at such time as the Chairman of the Council may appoint in this behalf and shall, subject to the other provisions of this section, observe such rules of procedure in regard to transaction of business at its meetings as it may, with the approval of the Central Government, lay down from time to time.

(2) The Zonal Council for each zone shall, unless otherwise determined by it, meet in the States included in that zone by rotation.

(3) The Chairman or in his absence the Vice-Chairman or in the absence of both the Chairman and the Vice-Chairman, any other Member chosen by the members present from amongst themselves shall preside at a meeting of the Council.

(4) All questions at a meeting of a Zonal Council shall be decided by a majority of votes of the members present and in the case of an equality of votes the Chairman or, in his absence any other person presiding shall have a second or casting vote.

(5) The proceedings of every meeting of a Zonal Council shall be forwarded to the Central Government and also to each State Government concerned.

[*] A new zonal council known as North-Eastern Council has been created under North-Eastern Council Act, 1971 (84 of 1971), comprising of the State of Assam and the newly created States of Nagaland, Meghalaya, Manipur and Tripura and the Union territories of Arunachal Pradesh and Mizoram—See Act 81 of 1971.

18. Power to appoint Committees.—(1) A Zonal Council may from time to time by resolution passed at a meeting appoint Committees of its members and Advisers for performing such functions as may be specified in the resolution and may associate with any such committee, such Ministers either for the Union or for the States and such officers serving either in connection with the affairs of the Union or of the States as may be nominated in that behalf by the Council.

(2) A person associated with a Committee of a Zonal Council under sub-section (1) shall have the right to take part in the discussions of the Committee but shall not have a right to vote at a meeting thereof.

(3) A Committee appointed under sub-section (1) shall observe such rules of procedure in regard to transaction of business at its meetings as the Zonal Council may, with the approval of the Central Government, lay down from time to time.

19. Staff of the Council.—(1) Each Zonal Council shall have a secretarial staff consisting of a Secretary, a Joint Secretary and such other officers as the Chairman may consider necessary to appoint.

(2) The Chief Secretaries of the States represented in such Council shall each be the Secretary of the Council by rotation and hold office for a period of one year at a time.

(3) The Joint Secretary of the Council shall be chosen from amongst officers not in the service of any of the States represented in the Council and shall be appointed by the Chairman.

20. Office of the Council.—(1) The office of the Zonal Council for each zone shall be located at such place within the zone as may be determined by the Council.

(2) The administrative expenses of the said office, including the salaries and allowances payable to or in respect of members of the secretarial staff of the Council other than the Secretary shall be borne by the Central Government out of monies provided by Parliament for the purpose.

21. Functions of the Councils.—(1) Each Zonal Council shall be an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest and advise the Central Government and the Government of each State concerned as to the action to be taken on any such matter.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), a Zonal Council may discuss, and make recommendations with regard to—

(a) any matter of common interest in the field of economic and social planning;

(b) any matter concerning border disputes, linguistic minorities or inter-State transport; and

(c) any matter connected with, or arising out of, the reorganization of the States under this Act.*

[*] And not under any other Reorganization Act?

22. Joint meetings of Zonal Councils.—(1) Where it is represented to the Zonal Council for any zone that a matter in which a State included in that zone and one or more States included in any other zone or zones have a common interest should be discussed at a joint meeting, it shall be lawful for the Zonal Councils concerned—

(a) to meet at such time and place as the Chairman thereof may, in consultation with each other, appoint in this behalf; and

(b) to discuss the said matter at such joint meeting and make recommendations to the Governments concerned as to the action to be taken on that matter.

(2) The Central Government may make rules for regulating the procedure at joint meetings of the Zonal Councils.

OBJECTS AND REASONS

"The Committee consider that it would be useful to have an enabling provision for a joint meeting of two or more zonal councils for the discussion of matters of common interest between the States included in different zones. This section has accordingly been inserted."—J.C.R.

PART IV
REPRESENTATION IN THE LEGISLATURES
The Council of States

23. Amendment of the Fourth Schedule to the Constitution.—As from the appointed day, in the Fourth Schedule to the Constitution, for the Table of Seats, the following Table shall be substituted, namely:—

"TABLE OF SEATS

1. Andhra Pradesh	18
2. Assam	6
3. Bihar	21
4. Bombay	27
5. Kerala	9
6. Madhya Pradesh	16
7. Madras	17
8. Mysore	12
9. Orissa	9
10. Punjab	11
11. Rajasthan	10
12. Uttar Pradesh	31
13. West Bengal	14
14. Jammu and Kashmir	4
15. Delhi	1
16. Himachal Pradesh	1
17. Manipur 18. Tripura	1
	208"

Note.—In conformity with Article 4 of the Constitution, this section has been added amending the Fourth Schedule of the Constitution. However, the Table given here is only of historical importance, as it has been subsequently revised by the Constitution (Seventh Amendment) Act, 1956, which came into force, along with this Act, with effect from the 1st November, 1956 and also by Acts LVI of 1959; XI of 1960; XXVII of 1962; XXXI of 1966; LIII of 1968; LIII of 1970; and LXXXI of 1971.

24. Allocation of sitting members in the Council of States.—(1) The twelve sitting members representing the State of Andhra and such six of the eleven sitting members representing the State of Hyderabad as the Chairman shall by order specify shall, as from the appointed day, be deemed to have been duly elected to fill the eighteen seats allotted to the State of Andhra Pradesh.

(2) Such five of the six sitting members representing the State of Travancore-Cochin and such three of the eighteen sitting members representing the State of Madras as the Chairman shall by order specify shall, as from the appointed day, be deemed to have been duly elected to fill eight of the nine seats allotted to the State of Kerala.

(3) The eleven sitting members representing the States of Bhopal, Madhya Bharat and Vindhya Pradesh and such five of the twelve sitting members representing the State of Madhya Pradesh as the Chairman shall by order specify shall, as from the appointed day, be deemed to have been duly elected to fill the sixteen seats allotted to the new State of Madhya Pradesh.

(4) Such one of the six sitting members representing the State of Travancore-Cochin as the Chairman shall by order specify shall, as from the appointed day, be deemed to have been duly elected to fill one of the seats allotted to the State of Madras.

(5) The six sitting members representing the State of Mysore, and such four of the seventeen sitting members representing the State of Bombay, and such two of the eleven sitting members representing the State of Hyderabad, as the Chairman shall by order specify shall, as from the appointed day, be deemed to have been duly elected to fill the twelve seats allotted to the new State of Mysore.

(6) The eleven sitting members representing the existing States of Punjab and Patiala and East Punjab States Union shall, as from the appointed day, be deemed to have been duly elected to fill the eleven seats allotted to the new State of Punjab.

(7) The nine sitting members representing the State of Rajasthan and the sitting members representing the States of Ajmer and Coorg shall, as from the appointed day, be deemed to have been duly elected to fill the ten seats allotted to the new State of Rajasthan:

Provided that if the number of sitting members representing the State of Rajasthan is less than nine, such one of the sitting members representing the existing State of Bombay as the Chairman shall by order specify shall, as from the appointed day, be deemed to have been duly elected to fill one of the seats allotted to the new State of Rajasthan.

(8) The five sitting members representing the States of Saurashtra and Kutch and the sitting members representing the existing States of Bombay, Hyderabad and Madhya Pradesh who have not been allocated under sub-sections (1), (3), (5) and (7) to Andhra Pradesh, Madhya Pradesh, Mysore or Rajasthan shall, as from the appointed day, be deemed to have been duly elected to fill the twenty-seven seats allotted to the new State of Bombay.

(9) In this section, "Chairman" means the Chairman of the Council of States.

OBJECTS AND REASONS

"The Fourth Schedule to the Constitution, allotting to each State or Union territory a certain number of seats in the Council of States, has been revised [see section 23 of this Act and section 3 of the Constitution (Seventh Amendment) Act, 1956]. In view of this revision of the allocation of seats, it became necessary to make detailed provision for the allocation of sitting members of the Council of States to the several States and Union territories after reorganization and this has been done by this section, namely, section 24. In all cases where a selection of individual sitting members becomes necessary, the Chairman of the Council of States is empowered by this section to make the selection. Because of the increase of the total number of seats in the Council of States, a few bye-elections will be necessary to fill the vacancies. Section 25 provides for the holding of these bye-elections in due course."—See S.O.R.

25. Bye-elections to fill vacancies.—As soon as may be after the appointed day, bye-election shall be held to fill the vacancies existing on the appointed day in the seats allotted to the States of Kerala and Madras.

26. Term of office of members.—In order that, as nearly as may be, one-third of the members may retire on the 2nd day of April, 1958, and on the expiration of every second year thereafter, the President shall, after consultation with the Election Commission, make by order* such provisions as he thinks fit in regard to the terms of office of the members elected under Section 25 and such modifications as he thinks fit in the terms of office of any of the sitting members.

[*] See the States Reorganisation (Council of States) (Term of Office of Members) Order, 1956—S.R.O. 2537 dated 1-11-1956 published in Gaz. of Ind., 1956, Extra., Pt. II-Sec. 3, page 2257.

The House of the People

27. Provision as to existing House.—Nothing in Part II shall be deemed to affect the constitution or duration of the existing House of the People or the extent of the constituency of any sitting member of that House.

OBJECTS AND REASONS

"As a result of the territorial changes, the constituencies of some of the sitting members in the House of the People will be transferred to another State and those of some others will be spread over two States. Provision is made in clause 25 [now section 27] that this shall not be deemed to affect the constitution or duration of the existing House of the People or the extent of the constituency of any sitting member of that House."—S.O.R.

The Legislative Assembly

28. Changes in composition and allocation of sitting members.— (1) Where by virtue of the provisions of Part II the whole area of any Assembly constituency in an existing State is transferred to any other existing State or becomes part of a new State other than Kerala,—

(a) that area shall, as from the appointed day, be deemed to form a constituency provided by law for the purpose of elections to the Legislative Assembly of such other existing State or of such new State, as the case may be; and

(b) the sitting member representing that constituency shall, as from the appointed day, be deemed to have been elected to the said Legislative Assembly by that constituency and shall cease to be a member of the Legislative Assembly of which he was a member immediately before that day.

(2) The sitting members representing the Assembly constituencies in the State of Madras falling wholly or partly within the territories of that State which, on the appointed day, become part of the new State of Kerala shall, as from that day, cease to be members of the Legislative Assembly of Madras.

(3) The provisions of the First Schedule shall apply in relation to the sitting members representing the Assembly constituencies specified therein, parts of which are by virtue of the provisions of Part II transferred from an existing State to another existing State or to a new State.

(4) The members of the electoral college for Kutch constituted under Section 27-A of the Representation of the People Act, 1950, shall, as soon as may be after the commencement of this Act, elect eight persons from among themselves in accordance with the system of proportional representation by means of the single transferable vote and in such manner as may be prescribed; and the person so elected shall, as from the appointed day, be deemed to have been elected to the Legislative Assembly of Bombay by a constituency comprising the whole of Kutch district.

(5) The office of member of the Council of Advisers constituted for the State of Kutch under Section 42 of the Government of Part C States Act, 1951, is hereby declared to be an office of profit under the Government of India which shall not disqualify its holder for being elected under sub-section (4) or for becoming a member of the Legislative Assembly of Bombay as provided in that sub-section.

(6) The sitting members nominated under Article 333 to represent the Anglo-Indian community in the Legislative Assemblies of Madhya Pradesh and Mysore shall, as from the appointed day, cease to be members of those Assemblies and shall be deemed to have been nominated under the said article by the respective Governors to the Legislative Assemblies of the corresponding new State.

29. Special provision for elections to the Andhra Pradesh Legislative Assembly.— When a general election is next held in the State of Andhra Pradesh for electing

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Section 28 — Note 1

(1) Reading Sections 28 and 30 together it is clear that Section 28 makes a transitional provision till general elections are held for the reorganised States and Section 40 and the Third Schedule deal with the allotment of seats for the general elections to take place to the reorganised States. It, therefore cannot be contended from the fact that there were 456 members of the Legislative Assembly of the reorganized Bombay State at the time when Bombay Acts 57 and 58 of 1956 were passed (which number is in excess of the number (396) prescribed in third Schedule) that the Bombay Legislative Assembly was illegally constituted and that persons, who had no authority to take part in the deliberations of the Assembly, had taken part in passing Bombay Acts in question. AIR 1957 Bom 165 (167) = ILR (1958) Bom 32 (DB).

(2) By sub-section (4) of Section 28 of the States Reorganisation Act a transitional provision is made for indirect election and that provision is not void, as being inconsistent with Article 170 of the Constitution. It appears implicit on a fair reading of Cls. (1) and (2) of Article 4 that the law referred to in Articles 2 and 3 which may inter alia make provision as to the representation in Parliament and the State Legislature may be inconsistent with the Constitution and may still be passed by the Parliament without following the procedure prescribed under Article 368 of the Constitution. AIR 1957 Bom 165 (167, 168) = ILR (1958) Bom 32 (DB).

members to the House of the People, election shall also be held to fill the seats allotted to the Assembly constituencies into which the transferred territory in that State is divided in the order referred to in sub-section (2) of section 47, as if those seats had become vacant; and as from the date appointed under the Representation of the People Act, 1951, as the date before which the said elections shall be completed, all the persons who, having been sitting members of the Legislative Assembly of Hyderabad, become on the appointed day members of the Legislative Assembly of Andhra Pradesh under sub-section (1) or sub-section (3) of section 28 of this Act shall cease to be such members.

30. Duration of Legislative Assemblies.—The period of five years referred to in Clause (1) of Article 172 shall, in the case of the Legislative Assembly of each new State except Kerala, as constituted by the provisions of section 28, be deemed to have commenced on the date on which it actually commenced in the case of the Legislative Assembly of the corresponding State.

31. Speakers and Deputy Speakers.—(1) As from the appointed day and until the first meeting of the Legislative Assembly of a new State other than Kerala, the persons who, immediately before the appointed day, are the Speaker and Deputy Speaker of the Legislative Assembly of the corresponding State shall, if they are members of the Legislative Assembly of the new State, be the Speaker and Deputy Speaker, respectively of that Assembly.

(2) As soon as may be after the appointed day, the Legislative Assembly of the State of Andhra Pradesh shall choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and until they are so chosen, the persons who immediately before the appointed day are the Speaker and Deputy Speaker of the Legislative Assembly of the existing State of Andhra shall be the Speaker and Deputy Speaker, respectively, of the Legislative Assembly of the State of Andhra Pradesh.

32. Rules of procedure.—Until rules are made under Cl. (1) of Art. 208 by the Legislative Assembly of a new State, the rules as to procedure and conduct of business in force immediately before the appointed day with respect to the Legislative Assembly of the corresponding State shall have effect in relation to the Legislative Assembly of the new State subject to such modifications and adaptations as may be made therein by the Speaker.

The Legislative Councils

33. Madhya Pradesh Legislative Council.—(1) As from such date as the President may by order appoint, there shall be a Legislative Council for the new State of Madhya Pradesh.

(2) In the said Council there shall be 72 seats of which—

(a) the numbers to be filled by persons elected by the electorates referred to in sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be 24, 6 and 6, respectively;

(b) the number to be filled by persons elected by the members of the Legislative Assembly in accordance with the provisions of sub-clause (d) of the said clause shall be 24; and

(c) the number to be filled by persons nominated by the Governor in accordance with the provisions of sub-clause (e) of that clause shall be 12.

Section 30 — Note 1

(1) By virtue of S. 30 read with S. 28 the reconstituted State Assembly is to be deemed to have come into existence on the date appointed for the first meeting of the Assembly in the old State. AIR 1957 Bom 165 (167) = ILR (1958) Bom 32 (DB).

Section 33 — Note I

(1) The appointment of a day for the purpose of Section 33 (1) and the day to be appointed by public notification under Section 8 (2) of the Constitution (Seventh Amendment) Act, 1956, are two different actions to be taken by the President. It is another matter that the two dates may be the same but the formalities for the two actions would be different. AIR 1959 Madh Pra 353 (356) (DB).

(3) As soon as may be after the commencement of this Act, the President, after consultation with the Election Commission, shall by order determine—

(a) the constituencies into which the said new State shall be divided for the purpose of elections to the Council under each of the sub-clauses (a), (b) and (c) of Cl. (3) of Article 171;

(b) the extent of each constituency; and

(c) the number of seats allotted to each constituency.

(4) As soon as may be after the appointed day steps shall be taken to constitute the said Council in accordance with the provisions of this section and the provisions of the Representation of the People Act, 1950 and the Representation of the People Act, 1951:

Provided that the election referred to in Clause (b) of sub-section (2) shall be held only after the general election to the Legislative Assembly of the new State of Madhya Pradesh has been held.

34. Bombay Legislative Council.—(1) As from such date° as the President by order appoint, there shall be a Legislative Council for the new State of Bombay.

(2) Until the said Council has been reconstituted in accordance with the provisions of sub-sections (4) and (5) of this section and summoned to meet for the first time, the said Council shall consist of—

(a) all the sitting members of the Legislative Council of the existing State of Bombay, except those representing the Belgaum (Local Authorities), Bijapur (Local Authorities) and Dharwar (Local Authorities) constituencies; and

(b) 25 members to represent the territories specified in clauses (b), (c), (d) and (e) of sub-section (1) of Section 8 who shall be chosen in such manner as may be prescribed.

(3) After such reconstitution as aforesaid, there shall be 72 seats in the said Council of which—

(a) the numbers to be filled by persons elected by the electorates referred to in sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be 24, 6 and 6, respectively;

(b) the number to be filled by persons elected by the members of the Legislative Assembly in accordance with the provisions of sub-clause (d) of the said clause shall be 24; and

(c) the number to be filled by persons nominated by the Governor in accordance with the provisions of sub-clause (e) of that clause shall be 12.

(4) As soon as may be after the commencement of this Act, the President, after consultation with the Election Commission, shall by order determine—

(a) the constituencies into which the said new State shall be divided for the purpose of elections to the Council under each of the sub-clauses (a), (b) and (c) of Cl. (3) of Article 171;

(b) the extent of each constituency; and

(c) the number of seats allotted to each constituency.

(5) As soon as may be after the appointed day, steps shall be taken to constitute the said Council in accordance with the provisions of this section and the provisions of the Representation of the People Act, 1950 and the Representation of the People Act, 1951:

Provided that the election referred to in Clause (b) of sub-section (3) shall be held only after the general election to the Legislative Assembly of the new State of Bombay has been held.

[°] i.e., 1-11-1956—See Gazette of India, Pt. II, Section 3, p. 1590.

35. Madras§ Legislative Council.—(1) In the Legislative Council of Madras as from the appointed day, there shall be *[50] seats of which—

(a) the numbers to be filled by persons elected by the electorates referred to in sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be †[16, 6 and 4] respectively;

(b) the number to be filled by persons elected by the members of the Legislative Assembly in accordance with the provisions of sub-clause (d) of the said clause shall be 16; and

(c) the number to be filled by persons nominated by the Governor in accordance with the provisions of sub-clause (e) of that clause shall be 8.

(2) As from the appointed day, the Delimitation of Council Constituencies (Madras) Order, 1951, shall have effect subject to the modifications directed by the Second Schedule, and in the said Order,—

(a) any reference to the State of Madras shall be construed as including the territory added to that State by Section 4 and as excluding the territory which ceases to be part of that State by virtue of section 5, Section 6 or Section 7;

(b) any reference to Tirunelveli district shall be construed as including the territory added to that district by Section 4; and

(c) any reference to Coimbatore district shall be construed as excluding Kollegal taluk.

(3) The two sitting members of the said Council representing the West Coast (Local Authorities) Constituency ‡[* * *] and such two of the eighteen sitting members elected by the members of the Legislative Assembly, as the Chairman of the said Council shall by order specify shall, on the appointed day, cease to be members of the said Council.

(4) If, immediately before the appointed day, the total number of sitting members nominated by the Governor is nine, such one of them as the Governor shall by order specify shall, on the appointed day, cease to be a member of the said Council.

(5) Save as provided by sub-section (3), every sitting member of the said Council representing a Council constituency the extent of which is altered by virtue of sub-section (2) shall, as from the appointed day, be deemed to have been elected to the said Council by that constituency as so altered.

(6) As soon as may be after the appointed day, bye-elections shall be held in all the local authorities constituencies to fill the vacancies existing on that day in the said Council.

(7) In order that, as nearly as may be, one-third of the members of the said Council may retire on the 20th April, 1958, and on the expiration of every second year thereafter, the Governor shall, after consultation with the Election Commission, make by order such provisions as he thinks fit in regard to the terms of office of the members elected under sub-section (6) and such modifications as he thinks fit in the terms of office of any of the sitting members.

[*] Substituted for "48" by the States Reorganisation (Amendment) Act, 1956 (LXVII of 1956), Section 2 (with retrospective effect from 1-11-1956).

Section 35 — Note I

(1) It will not be correct to say that the failure of the Chairman to abide by a suggestion that the members to be eliminated could be determined by lot was itself an indication that he was determined to exclude himself from the two and to exercise the power only to the prejudice of those to whom he bore hostility. If Section 35 (3) sets up a particular method for the elimination of the surplus members there is no power in the Chairman to vary it. (1956-57) 12 Ele LR 345 (354) (DB) (Mad).

(2) Section 35 (3) expressly provides for the elimination of two out of six and contains no provision for the statutory continuance in office of the Chairman. (1956-57) 12 Ele LR 345 (356) (DB) (Mad).

(3) In so far as Section 35 (3) enjoins on the Chairman a duty to choose between rival councillors, it cannot be said to be purely or merely administrative. The nomenclature which is apt, would be to describe it as an administrative duty of a quasi-judicial character. (1956-57) 12 Ele LR 345 (363. 364) (DB) (Mad).

(4) Section 35 (3) in so far as it enables the Chairman of the Madras Legislative Council to specify by order two of the sitting members of the Graduates constituency, offends Article 14 of the Constitution and the sub-section is to that extent void and inoperative. (1956-57) 12 Ele LR 345 (366) (DB) (Mad).

[†] Substituted for figures and word "16, 4 and 4", ibid.

[‡] The words "and such two of the six sitting members representing the Madras (Graduates) Constituency" were omitted, ibid.

[§] Name of the State has now been altered to Tamil Nadu—See Act 53 of 1968.

36. Mysore Legislative Council.—(1) As from the appointed day there shall be a Legislative Council for the new State of Mysore.

(2) Until the said Council has been reconstituted in accordance with the provisions of sub-sections (3) and (4) of this section and summoned to meet for the first time, the said Council shall consist of—

(a) all the sitting members of the Legislative Council of the existing State of Mysore, and

(b) 12 members to represent the territories specified in Clauses (b), (c), (d) and (e) of sub-section (1) of Section 7 who shall be chosen in such manner as may be prescribed.

(3) After such reconstitution as aforesaid, there shall be 52 seats in the said Council of which—

(a) the number to be filled by persons elected by the electorates referred to in sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be 18, 4 and 4, respectively;

(b) the number to be filled by persons elected by the members of the Legislative Assembly in accordance with the provisions of sub-clause (d) of the said clause shall be 18; and

(c) the number to be filled by persons nominated by the Governor in accordance with the provisions of sub-clause (e) of that clause shall be 8.

(4) The provisions of sub-sections (4) and (5) of Section 34 shall apply in relation to the said Council as they apply in relation to the Legislative Council for the new State of Bombay.*

[*] Bombay has now been split up into two States—Gujarat and Maharashtra—See Act XI of 1960.

37. Punjab* Legislative Council.—(1) As from the appointed day there shall be a Legislative Council for the new State of Punjab.

(2) Until the said Council has been reconstituted in accordance with the provisions of sub-sections (3) and (4) of this section and of any other law for the time being in force and has been summoned to meet for the first time, the said Council shall consist of—

(a) all the sitting members of the Legislative Council of the existing State of Punjab; and

(b) six persons to be elected in such manner as may be prescribed by the members of the Legislative Assembly of the existing State of Patiala and East Punjab States Union from amongst persons who are not members of that Assembly.

(3) After such reconstitution as aforesaid, there shall be 40 seats in the said Council of which—

(a) the numbers to be filled by persons elected by the electorates referred to in sub-clauses (a), (b) and (c) of Clause (3) of Article 171 shall be 13, 3 and 3, respectively;

(b) the numbers to be filled by persons elected by the members of the Legislative Assembly in accordance with the provisions of sub-clause (d) of the said clause shall be 13; and

(c) the number to be filled by persons nominated by the Governor in accordance with the provisions of sub-clause (e) of that clause shall be 8.

(4) The provisions of sub-sections (4) and (5) of Section 34 shall apply in relation to the said Council as they apply in relation to the Legislative Council for the new State of Bombay.

[°] Punjab has now been split up into the States of Haryana and Punjab and the Union territory of Chandigarh. Part of it has been transferred to Himachal Pradesh, which is now a State under Act 53 of 1970.

38. Chairman and Deputy Chairman.—(1) As from the appointed day and until the first meeting of the Legislative Council of the new State of Bombay,

Mysore or Punjab, as the case may be, the persons who immediately before the appointed day are the Chairman and Deputy Chairman of the Legislative Council of the corresponding State shall be the Chairman and Deputy Chairman, respectively of that Council.

39. Rules of procedure.—Until rules are made under clause (1) of Article 208 by the Legislative Council of the new State of Bombay, Mysore or Punjab, the rules as to procedure and conduct of business in force immediately before the appointed day with respect to the Legislative Council of the corresponding State shall have effect in relation to the Legislative Council of the new State subject to such modifications and adaptations as may be made therein by the Chairman.

Delimitation of Constituencies

40. Allocation of seats in the House of the People and assignment of seats to the State Legislative Assemblies.—The number of seats in the House of the People allotted to each of the States and the number of seats assigned to the Legislative Assembly of each Part A State and of each Part B State other than Jammu and Kashmir by order of the Delimitation Commission under the Delimitation Commission Act, 1952 (hereinafter in this Part referred to as "the former Commission" and "the former Act", respectively) shall be modified as shown in the Third Schedule.

OBJECTS AND REASONS

"The Commission set up by the Delimitation Commission Act, 1952, finished its task a few months ago after delimiting Parliamentary and Assembly constituencies in all the existing States. In view of the territorial changes proposed in Part II of this Bill, the allocation of seats made by that Commission has to be revised. Instead of leaving this revision to be done by the new Delimitation Commission, it is proposed in clause 37 [now section 40] and the Third Schedule to fix the number of seats in the House of the People to be allotted to each of the reorganized States and Union territories and the total number of seats to be assigned to the Legislative Assembly of each State. The numbers already allotted or assigned by the former Commission in the case of those existing States which are unaffected by the provisions of Part II . . . . are retained in the Schedule without any change, and only the numbers in regard to the other States have been altered. The quota for each State in the House of the People has been arrived at by dividing the population of the State by the same general average as was adopted by the former Delimitation Commission (i.e., 732; 983) and by rounding off to the nearest integer. For assigning the total number of seats in the various Legislative Assemblies, such multiple has been adopted as will preserve the delimitation work already done to the greatest extent."—S.O.R.

41. Modification of the Scheduled Castes and Scheduled Tribes Orders.—As soon as may be after the commencement of this Act, the President shall by order make such modifications[*] in the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Part C States) Order, 1951, the Constitution (Schedule Tribes) Order, 1950 and the Constitution (Scheduled Tribes) (Part C States) Order, 1951, as he thinks fit having regard to the territorial changes and formation of new States under the provisions of Part II.

[*] See the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956—S.R.O. 2477-A published in Gaz. of Ind., 1956, Pt. II, Sec. 3, Extra., p. 2161/1.

Section 40 — Note 1

(1) Section 40 only deals with allocation of seats in the House of the People and in the Legislative Assemblies for the election to take place after the Delimitation Commission finishes its labour and determines the constituencies and allots the seats in the manner prescribed by the Act. AIR 1957 Bom 165 (167) = ILR (1958) Bom 32 (DB).

Section 41 — Note 1

(1) The power under Section 41 extends only to making such modification in the original Scheduled Castes Order, as is compatible with the territorial changes and formation of new States. That power, therefore, does authorise the President to exclude any person from the category of a Scheduled Caste who enjoyed that status under the original Scheduled Castes Order. AIR 1961 Madh Pra 84 (87) (DB).

OBJECTS AND REASONS

Sections 41 and 42.—"It will not be practicable to fix in the Bill itself the numbers of seats to be reserved for the Scheduled Castes and Scheduled Tribes of each State and Union territory in the House of the People and in the State Legislative Assembly. This task has to be done by the Delimitation Commission, but before it can do so, the existing Scheduled Castes and Scheduled Tribes Orders made by the President under Arts. 341 and 342 and proposed to be amended by a separate Bill [now see Act LXIII of 1956] will have to be adapted and modified with reference to the reorganization of States. Clause 38 [now S. 41] proposes to vest this power of adaptation in the President. Provision is made in clause 39 [now S. 42] empowering the census authority to ascertain or estimate the population of the Scheduled Castes and of the Scheduled Tribes in each State and in each Union territory, in such manner as may be prescribed and to notify those population figures in the Gazette of India. After these two essential steps have been taken, the Delimitation Commission will arrive at the number of seats to be reserved for the Scheduled Castes and Scheduled Tribes of each State in the House of the People and in the State Legislative Assembly."—S.O.R.

42. Determination of population of Scheduled Castes and Scheduled Tribes.—(1) After the said Orders have been so modified the population as at the last census of the scheduled castes and of the scheduled tribes in the territory which, as from the appointed day, will be comprised in each of the States of Andhra Pradesh, Bombay, Kerala, Madhya Pradesh, Madras, Mysore, Punjab and Rajasthan, shall be ascertained or estimated by the census authority in such manner as may be prescribed* and shall be notified† by that authority in the Gazette of India.

(2) The population figures so notified shall be taken to be the relevant population figures as ascertained at the last census and shall supersede any figures previously published.

[*] For rules, see rules made under Section 129.

[†] See Notfn. No. 29/11/56-RG dated 8-11-1956 publisred in Gaz. of Ind., 1956, Pt. I, Sec. 1, Extra., page 1021.

43. Constitution of Delimitation Commission.—(1) As soon as may be after the commencement of this Act, the Central Government shall constitute a commission to be called the Delimitation Commission which shall consist of three members as follows:—

(a) two members each of whom shall be a person who is or has been, a Judge of the Supreme Court or of a High Court, to be appointed by the Central Government; and

(b) the Chief Election Commissioner, ex officio.

(2) The Central Government shall nominate one of the members appointed under Clause (a) of sub-section (1) to be the Chairman of the Commission.

44. Duties of the Commission.—It shall be the duty of the Commission—

(a) to determine on the basis of the population figures notified under Section 42 the number of seats, if any, to be reserved for the scheduled castes and scheduled tribes of each of the States mentioned in that section in the House of the People and in the Legislative Assembly of the State, having regard to the relevant provisions of the Constitution and of this Act;

(b) to determine the Parliamentary and Assembly constituencies into which each new State shall be divided, the extent of, and the number of seats to be allotted to each such constituency, and the number of seats, if any, to be reserved for the scheduled castes and the scheduled tribes of the State in each such constituency: and

(c) to revise or cancel any of the orders of the former Commission made under section 8 of the former Act so as to provide, having regard to the provisions of the Constitution and of this Act, for a proper delimitation of all Parliamentary and Assembly constituencies.

45. Associate members.—(1) For the purpose of assisting the Commission in the performance of its functions under clause (b) of section 44, the Commission shall associate with itself in respect of each new State such five persons as the Central Government shall by order specify, being persons who are members either of the House of the People or of the Legislative Assembly of an existing State:

Provided that such persons shall be chosen, so far as practicable, from among those members who were associated with the former Commission in delimiting constituencies in any part of the territories of the new State.

(2) None of the associate members shall have a right to vote or to sign any decision of the Commission.

46. Casual vacancies.—If, owing to death or resignation, the office of the Chairman or of a member or of an associate member falls vacant, it shall be filled as soon as may be practicable by the Central Government in accordance with the provisions of section 43 or as the case may be, of section 45.

47. Procedure as to delimitation.—(1) The provisions of section 7 of the former Act shall apply in relation to the Commission as it applied in relation to the former Commission; and in determining the matters referred to in clauses (b) and (c) of section 44, the Commission shall have regard to the provisions contained in clauses (a) to (e) of sub-section (2) of section 8 of the former Act.

(2) After determining all the matters referred to in section 44, the Commission shall prepare an order, to be known as the Delimitation of Parliamentary and Assembly Constituencies Order, 1956 and send authenticated copies thereof to the Central Government and to each of the State Governments; and thereupon, that Order shall supersede all the orders made by the former Commission and have the full force of law and shall not be called in question in any Court.

(3) As soon as may be after the said Order is received by the Central Government or a State Government, it shall be laid before the House of the People or, as the case may be, the Legislative Assembly of the State.

(4) Subject to the provisions of sub-section (5), the readjustment of the representation of the several constituencies in the House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in the said Order shall apply in relation to every election to the House of the People or to the Legislative Assembly of a State, as the case may be, held after the appointed day, and shall so apply in supersession of the provisions contained in any other law.

(5) Nothing in this section shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the House or the Assembly, as the case may be, existing or brought into existence on the appointed day.

(6) At any time within six months of the date of the said Order, any printing mistake found therein and any other error arising therein from an accidental slip or omission may be corrected by the Chief Election Commissioner by order published in the Gazette of India.

[*] Now reorganized into the States of Gujarat and Maharashtra—See Act XI of 1960.

[†] Now known as Tamil Nadu—See Act 53 of 1968.

48. Special provision as to certain elections.—Where any election is held during the year commencing on the appointed day to fill a seat or seats in the Council of States allotted to a new or reorganised State or a seat or seats in the Legislative Assembly or Legislative Council, if any, of such State, any person who is for the time being an elector for a Parliamentary constituency or Assembly constituency in any of the connected States shall, for the purpose of sub-section (1)

of section 3, clause (c) of section 5 or sub-section (1) of section 6, as the case may be, of the Representation of the People Act, 1951, be deemed to be an elector for a Parliamentary constituency or Assembly constituency, as the case may be, of that new or reorganised State.

Explanation.—In this section "new or reorganised State" means any of the States specified in the first column of the following Table, and "connected States", in relation to a new or reorganised State, means the States specified against that new or reorganised State in the second column:

New or Reorganised State	Connected States
(1)	(2)
1. Andhra Pradesh	Bombay and Mysore.
2. Bombay	Andhra Pradesh, Madhya Pradesh and Mysore.
3. Kerala	Madras (now Tamil Nadu).
4. Madhya Pradesh	Bombay (Maharashtra).
5. Madras (Tamil Nadu)	Kerala and Mysore.
6. Mysore	Andhra Pradesh, Bombay and Madras.

PART V
High Courts

49. High Courts for the new States.—(1) The High Courts exercising immediately before the appointed day jurisdiction in relation to the existing States of Bombay, Madhya Pradesh and Punjab shall, as from the appointed day, be deemed to be the High Courts for the new States of Bombay, Madhya Pradesh and Punjab, respectively.

(2) As from the appointed day, there shall be established a High Court for each of the new States of Kerala, Mysore and Rajasthan.

50. Abolition of certain Courts.—(1) As from the appointed day, the High Courts of all the existing Part B States, except Jammu and Kashmir, and the Courts

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Section 49 — Note 1

(1) The Mysore High Court is not bound by the decisions of the former Chief Court of Mysore and of the former High Court of Mysore delivered prior to 1-11-1956, as the present High Court, which was established after the reorganisation of the States, can by no means be said to be the representative of the High Court of the former State of Mysore nor can the said High Court be regarded as a Court of co-ordinate jurisdiction with the former Mysore High Court. **AIR 1959 Mys 1 (1) = ILR (1956) Mys 283 = 1959 Cri LJ 57 (FB).**

(2) Under Section 49, the High Court which immediately prior to 1-11-1956 was exercising jurisdiction in relation to the existing States of Bombay was deemed to be the High Court for the new State of Bombay. The power of superintendence under Article 227 of the Constitution could be exercised by that High Court throughout the territories of the new State of Bombay only as from 1-11-1956. Similarly, the High Court for the new State of Mysore could. as from 1-11-1956, exercise its powers of superintendence under Article 227 in relation to the territories included in the new State of Mysore. AIR 1959 Mys 108 (111) = ILR (1959) Mys 150 (DB).

Section 50 — Note 1

(1) The effect of Ss. 50 and 65 of the Act was that all the proceedings pending in the defunct Hyderabad High Court and statutorily transferred to the Andhra Pradesh High Court became subject to its appellate jurisdiction and thereafter were governed by the procedure which obtained in the Andhra Pradesh High Court regulating that jurisdiction. Therefore even in a case statutorily transferred from Hyderabad High Court to Andh. High Court a Letters Patent Appeal from the decision of a single Judge of Andhra High Court will be maintainable subject to the conditions prescribed by R. 95 of the Appellate Side Rules. AIR 1958 Andh Pra 60 (62) = ILR (1957) Andh Pra 660 (DB).

(2) The High Court of Mysore constituted on 1st November 1956, is not bound by the decisions of the Chief Court of Mysore and of the High Court of Mysore delivered prior to 1st November. **AIR 1956 Mys 1 (4, 7) = ILR (1958) Mys 288 = 1959 Cri LJ 57 (FB).** (Principle of stare decisis is, however. applicable.)

(3) Rules of High Court providing for hearing of appeals by certain number of Judges — Merely regulate working of High Court and do not confer any right on appellant — Order of reference to Full Bench made by Travancore-Cochin High Court before States Reorganisation Act — Appeal transferred to Madras High Court under States Reorganisation Act — Appellant cannot claim any right to have his appeal heard by Full Bench of Madras High Court. AIR 1962 Mad 304 (306, 307).

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of the Judicial Commissioners for Ajmer, Bhopal, Kutch and Vindhya Pradesh shall cease to function and are hereby abolished.

(2) Nothing in sub-section (1) shall prejudice or affect the continued operation of any notice served, injunction issued, direction given or proceedings taken before the appointed day by any of the Courts abolished by that sub-section under the powers then conferred upon that Court.

(3) Every such Judge of a High Court abolished by sub-section (1) as the President after consultation with the Chief Justice of India may, by order made before the appointed day, specify shall, as from that day, become a Judge, or if so specified the Chief Justice, of such High Court as the President may in that order specify.

51. Principal seat and other places of sitting of High Courts for new States.— (1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint.*

(2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent Bench† or Benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and Division Courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint.

[*] See S.R.O. 2514 dated 27-10-1956 published in Gaz. of Ind., 1956, Extra., Pt. II, Sec. 3, page 2195.

[†] As regards permanent Bench of Bombay High Court at Nagpur, see the Bombay Reorganisation Act, 1960 (XI of 1960), Section 41.

Section 51 — Note 1

(1) There can be little doubt that Sec. 51 (3) was mainly designed to provide for the disposal of cases pending before certain High Courts and benches which under the provisions of the Act were to cease to function at particular places. The Chief Justice acting under Section 51 (3) could arrange for the disposal of the cases at those very places in case the President did not think it fit to establish permanent benches there under sub-section (2) of Section 51. AIR 1958 Ker 188 (192) = ILR (1958) Ker 629 (DB).

(2) The use of the term "division Courts" in Section 51 (3) can by no means imply that a division Court is the High Court itself. AIR 1958 Ker 188 (190) = ILR (1958) Ker 629 (DB).

(3) If a permanent bench with a separate registry is required, then the President must act under Section 51 (2). but if all what is required is an occasional bench when occasion demands, the Chief Justice may act under Section 51 (3) after obtaining the approval of the Governor. AIR 1958 Ker 188 (191) = ILR (1958) Ker 629 (DB).

(4) The Bench sitting at Trivandrum under Section 51 (3) of the States Reorganisation Act has no power to receive cases. The Notification issued by the Chief Justice acting under Section 51 (3) appointing "Trivandrum as a place where Judges and Division Courts of the High Court may also sit to dispose of such cases as may from time to time be specified in this behalf by the Chief Justice" is silent on the point and properly so. AIR 1958 Ker 188 (192) = ILR (1958) Ker 629 (DB).

(5) The notification dated 28-11-1968 issued by the President constituting a permanent Bench of Madhya Pradesh High Court at Indore and another notification constituting permanent Bench at Gwalior are not intended to be retroactive and do not render retroactively ineffective the contrary orders passed earlier by the Chief Justice in exercise of his undoubted powers. AIR 1971 MP 40 (42) = 1970 MPWR 765 (777). (AIR 1959 Bom 363 **Dissented from.**)

(6) The notification dated 28-11-1968 issued by the President constituting a permanent Bench of M. P. High Court at Indore and specifying its territorial jurisdiction does not preclude the Judges constituting that Bench from hearing cases other than those indicated therein. It cannot stand in the way of Chief Justice transferring a case to it which ordinarily be heard at the main seat of the High Court. **AIR 1971 Madh Pra 40 (42) = 1970 MPLJ 784 (FB).**

(7) A professor in Jabalpur college posted at Gwalior filed a writ petition in Gwalior Bench against his order of transfer to Gwalior college by the Jabalpur University. The jurisdiction of a Gwalior Bench is restricted by President's order under S. 51 (2) to cases arising in districts specified therein — **Held** that neither the Jabalpur University nor the office of that university was located within the district specified in the President's order and hence merely because the petitioner was posted at Gwalior did not give the Gwalior Bench jurisdiction to entertain the petition. AIR 1971 MP 15 (16) = 1970 MPLJ 563 (DB).

OBJECTS AND REASONS

"The Committee consider that an express provision should be made in this Bill for locating the principal seat of the High Court for a new State as well as the places where it should have permanent Benches. Having regard to the fact that the constitution and organisation of High Courts is a matter in the Union List the Committee have proposed in this clause that the principal seat will be at such place as the President may notify and that he will also decide the location of permanent Benches of a High Court after consulting the Governor and the Chief Justice."—J.C.R.

52. Jurisdiction of High Courts for new States.—The High Court for a new State shall have, in respect of any part of the territories included in that new State, all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court or Judicial Commissioner's Court for an existing State.

OBJECTS AND REASONS

Sections 52 to 69.—"The detailed provisions contained in these sections follow in the main the provisions made in the Andhra State Act, 1953. Sections 52 to

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Section 52 — Note 1

(1) Section 52 merely clothes the Mysore High Court with all the powers originally enjoyed by the Hyderabad High Court. A second appeal from an area forming part of the old Hyderabad State before re-organisation, after that area was transferred to the Mysore State after re-organisation will be governed by the rules of procedure of the Mysore High Court and not those of the now defunct Hyderabad High Court. Such an appeal can be heard by a single Judge according to the rules of practice of the Mysore Court although, according to Sec. 6 of the Hyderabad High Court Act such an appeal would have been heard by a Bench. AIR 1959 Mys 253 (254) = ILR (1959) Mys 257.

(2) The law governing the jurisdiction of the High Court of Bombay and now the High Court of Gujarat in relation to the Kutch area is the same as the law prevailing in relation to the Commissioner's Court at Kutch before the commencement of the States Reorganisation Act of 1956 and Bombay Reorganisation Act 1960. The law relating to the jurisdiction of the Commissioner's Court at Kutch did not permit a Second Appeal hence Letters Patent Appeal cannot lie from a decision of the single Judge in a case from Kutch area. (1966) 7 Guj LR 532 (535) ** (1964) 5 Guj LR 907.

(3) The former High Court of Mysore before 1-11-1956 had no power to appoint a guardian of the undivided interest of minor in a joint Hindu family property nor was it a High Court having original civil jurisdiction. Therefore the present Mysore High Court having jurisdiction under Section 52 of S. R. Act does not have any jurisdiction much less inherent jurisdiction to appoint a guardian of the undivided interest of the minor in a joint Hindu family property. AIR 1968 Mys 178 (182) = (1967) 2 Mys LJ 342.

(4) Appeal from Kollegal taluq transferred to District Judge at Mysore — That Court has power to transfer it to Civil Judge at Mysore for disposal under Section 13 of Madras Act as adapted by the Mysore Government and as the Kollegal Taluq has come within the jurisdiction of new Mysore High Court since 1-11-1956. AIR 1966 Mys 49 (52, 53) — (1965) 2 Law Rep 234.

(5) Section 52 preserved the original appellate and another jurisdiction which was under the law in force immediately before 1-11-1956 and exercisable in respect of territories within the State of Saurashtra. But any restriction on the exercise of powers of Judges under the law in force in Saurashtra was not preserved unless it was so preserved by express provision. Thus the provisions of Section 22-A of the Saurashtra Ordinance of 1948 were not preserved by Section 52 and Letters Patent Appeal from a single Judge could be heard by the High Court of Bombay and then High Court of Gujarat without a certificate from the single Judge. **AIR 1971 SC 300 (305) = (1970) 2 SCR 434.** (AIR 1965 Guj 85, **Reversed.**)

(6) According to S. 52 the High Court of new Mysore State in respect of the territories of the erstwhile State of Mysore included in the new state of Mysore such original, appellate and other jurisdiction as under the law in force immediately before 1-11-1956 was exercisable in respect of the said territory by the erstwhile High Court of Mysore. (1965) 2 Law Rep 118 (121) (Mys).

(7) Findings of Hyderabad High Court recorded in its Order of remand are binding on the Andhra Pradesh High Court because the provisions of Sections 52 and 54 of the States Reorganisation Act, reveal that the Andhra Pradesh High Court shall have, in respect of that part of the Nizam's territory included in the State of Andhra Pradesh, the same original and appellate jurisdiction which the Hyderabad High Court had, and that the law with respect to practice and procedure in the High Court shall, with necessary modifications, apply in relation to the High Court of Andhra Pradesh. AIR 1965 Andh Pra 474 (477, 478) = (1965) 1 Andh WR 268.

57 contain general provisions as regards the jurisdiction and powers of the High Courts for the new States. The existing laws relating to appeals to the Supreme Court from various High Courts are continued in force by section 58. Sections 59 to 66 provide for the transfer of proceedings from one High Court to another on the appointed day as a result of the reorganization of the States and High Courts. Provision is made in section 67 for enabling advocates and attorneys already engaged in those proceedings to appear and to act in the other High Court in relation to those proceedings."—See S.O.R.

53. Power to enrol advocates, etc.—[Repealed by the Advocates Act, 1961 (XXV of 1961), Section 50 (5) and Schedule (4-1-1963).]

54. Practice and procedure.—Subject to the provisions of this Part, the law in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, with necessary modifications, apply in relation to the High Court for a new State, and accordingly, the High Court for the new State shall have all such powers to make rules and orders with respect to practice and procedure as are, immediately before the appointed day, exercisable by the High Court for the corresponding State:

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court for the corresponding State shall, until varied or revoked by rules or orders made by the High Court for a new State, apply with the necessary modifications in relation to practice and procedure in the High Court for the new State as if made by that Court.

55. Custody of seal of the High Court.—The law in force immediately before the appointed day with respect to the custody of the seal of the High Court for the corresponding State shall, with the necessary modifications, apply with respect to the custody of the seal of the High Court for a new State.

Section 52 — Note 1 (contd.)

(8) Section 52 preserving the law as obtaining in each of the areas merged with the old Bombay State intact so far as the law relating to jurisdiction of the High Court of Bombay for the new State is concerned in its application to those areas does not violate Article 14 of the Constitution. (1966) 7 Guj LR 532 (540. 544).

(9) Letters Patent (Bom), Clause 15 — Original suit and first appeal filed in Courts within jurisdiction of Bombay High Court prior to reorganization — Merger of area in Mysore State — Second appeal after merger in Mysore High Court — Right of appeal under Clause 15, Letters Patent (Bom) not lost as it is a substantive right and the powers of former Bombay High Court will be exercisable by the new Mysore High Court in view of Section 52. ILR (1961) Mys 706 (709).

(10) The jurisdiction under Cl. 16 of the Bombay Letters Patent exercised by Bombay High Court and now transferred to Mysore High Court by Section 52 S. R. Act is as stated in Section 69 subject to legislation which may be made by the appropriate legislature. AIR 1965 Mys 76 (84) (DB).

Section 54 — Note 1

(1) Section 54 does not apply to the rules made by the High Court at Nagpur under Section 122, Civil P. C. The law, rules and orders referred to in that section are those which deal with practice and procedure "in all Courts". A Rule made by a High Court under Section 122, Civil P. C. is a piece of delegated subordinate legislation. It will be governed by Section 119 and not by Sec. 54. AIR 1960 Madh Pra 130 (132).

(2) Second Appeal from area forming part of old Hyderabad State — Appeal is governed by the rules of procedure of Mysore High Court and not of now defunct Hyderabad High Court— Appeal can be heard by single Judge according to Mysore High Court Rules although according to Hyderabad High Court Act it would have been heard by a Bench. AIR 1959 Mys 253 (254) = ILR (1959) Mys 257.

(3) Order of remand by Hyderabad High Court — Decision binding on Andhra Pradesh High Court because under Section 52 the Andhra High Court gets the power of the Hyderabad High Court with respect to the Nizam's territory included in Andhra Pradesh and under Section 54 the law of practice and procedure in Hyderabad High Court applies with necessary modifications to the Andhra High Court. AIR 1965 Andh Pra 474 (477, 478) = (1965) 1 Andh WR 268 (DB).

(4) Rules governing advocate's fees are matters relating to practice and in view of Section 54 the rules of procedure in this respect prevailing in the High Court of erstwhile Mysore State will continue to apply in the High Court of new Mysore State even in the appeal which comes from the area which formerly was in Madras State. The rules of procedure of Madras High Court will not apply. (1966) 2 Mys LJ 182 (183).

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56. Form of writs and other processes.—The law in force immediately before the appointed day with respect to the form of writs and other processes used, issued or awarded by the High Court for the corresponding State shall, with the necessary modifications, apply with respect to the form of writs and other processes used, issued or awarded by the High Court for a new State.

57. Powers of Judges.—The law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court for the corresponding State and with respect to matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court for a new State.

58. Procedure as to appeals to the Supreme Court.—The law in force immediately before the appointed day relating to appeals to the Supreme Court from the High Court for the corresponding State and the Judges and Division Courts thereof shall, with the necessary modifications, apply in relation to the High Court for a new State.

59. Transfer of proceedings to Bombay High Court.—(1) Except as hereinafter provided, the High Court at Nagpur (which on the appointed day becomes the High Court for the new State of Madhya Pradesh and is referred to in this Act as the High Court of Madhya Pradesh) shall, as from that day, have no jurisdiction in respect of the territory transferred from the existing State of Madhya Pradesh to the new State of Bombay.

(2) Such proceedings pending in the High Court at Nagpur or the High Court of Hyderabad immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court for the new State of Bombay (referred to in this Act as the High Court of Bombay) shall, as soon as may be after such certification, be transferred to the High Court of Bombay.

(3) All proceedings pending in the High Court of Saurashtra or in the Court of the Judicial Commissioner for Kutch immediately before the appointed day shall stand transferred to the High Court of Bombay.

Section 57 — Note 1

(1) Saurashtra High Court abolished and jurisdiction conferred on Bombay High Court — Appeal transferred to Gujarat High Court under Bombay Reorganisation Act (1960) — **Held,** appeal from single Judge to Division Bench was governed by Letters Patent Clause 15 (Bom) and not by S. 22A of Saurashtra Ordinance 2 of 1948. **AIR 1971 SC 300 (305) = (1970) 2 SCR 434.** (AIR 1965 Guj 87. **Reversed.**)

Section 59 — Note 1

(1) Section 59 (3) is not an extension of the jurisdiction of the High Court under Article 230 of the Constitution so as to permit the High Court to issue writs under Art. 226 of the Constitution to authorities and persons not situated within its jurisdiction. Further, Article 230 postulates a law with certain element of permanence and continuity. There is neither an element of permanence nor of continuity in Section 59 (5). **AIR 1959 Bom 122 (124) = ILR (1959) Bom 641 (FB).**

(2) Where a case came before the High Court of Bombay on a certificate of the Chief Justice of the former Nagpur High Court under Section 59 (2), it was held that the certificate was not an order made on the judicial side of the Nagpur High Court. It could not estop the present State of Bombay from raising a contention before the High Court that although the order of dismissal of the petitioner was passed at a place outside the territories of the present State of Bombay that fact would not preclude the petitioner from claiming reliefs against the present State of Bombay, nor could it, in any event, come in the way of the High Court from deciding the contention raised. AIR 1959 Bom 363 (368) = ILR (1959) Bom 1267 (DB).

(3) In a case in which a petition for a writ was filed by a dismissed Government servant against the State of Madhya Pradesh and admitted by the High Court of Nagpur but subsequently transferred to the Bombay High Court under the provisions of Sec. 59 (2), the Bombay High Court cannot issue a writ to the State of Madhya Pradesh to reinstate the petitioner if it finds the petitioner entitled to remedy. **AIR 1959 Bom 122 (124) = ILR (1959) Bom 641 (FB).**

(4) The principle that if a party is within jurisdiction at the inception of a proceeding he cannot take away the jurisdiction of the court by withdrawing himself from the jurisdiction and that the court will pass an order notwithstanding the fact that he is no longer within the jurisdiction will not apply to the provisions of Section 59 (5). **AIR 1959 Bom 122 (124) = ILR 1959 Bom 641 (FB).**

(5) Notice under Section 34, Income-tax Act — Section 59 (4) has no application to the case. 1961 MPLJ 111 (113) (DB).

(4) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court of Madhya Pradesh shall have, and the High Court of Bombay shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any orders passed by the High Court at Nagpur before the appointed day:

Provided that if, after any such proceedings have been entertained by the High Court of Madhya Pradesh, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Bombay, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(5) Any order made before the appointed day by any Court referred to in sub-section (2) or sub-section (3) in any proceedings transferred to the High Court of Bombay by virtue of sub-section (2) or sub-section (3) shall for all purposes have effect, not only as an order of that Court, but also as an order of the High Court of Bombay; and any order made by the High Court of Madhya Pradesh in any proceedings with respect to which that Court retains jurisdiction by virtue of sub-section (4) shall for all purposes have effect, not only as an order of that High Court, but also as an order of the High Court of Bombay.

60. Extension of jurisdiction of, and transfer of proceedings to, Kerala High Court.—(1) As from the appointed day the jurisdiction of the High Court for the State of Kerala (referred to in this Act as the High Court of Kerala) shall extend to the *[Union territory] of the Laccadive, Minicoy and Amindivi Islands.

(2) Except as hereinafter provided, the High Court at Madras shall, as from the appointed day, have no jurisdiction in respect of the said *[Union territory] or in respect of any territory transferred from the State of Madras to the State of Kerala.

(3) Such proceedings pending in the High Court at Madras immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Kerala shall, as soon as may be after such certification, be transferred to the High Court of Kerala.

(4) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court at Madras shall have, and the High Court of Kerala shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings, where any such proceedings seek any relief in respect of any order passed by the High Court at Madras before the appointed day:

Provided that if, after any such proceedings have been entertained by the High Court at Madras, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Kerala, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred accordingly.

(5) Any order made by the High Court at Madras—

(a) before the appointed day in any proceedings transferred to the High Court of Kerala by virtue of sub-section (3); or

(b) in any proceedings with respect to which the High Court at Madras retains jurisdiction by virtue of sub-section (4),

shall for all purposes have effect, not only as an order of the High Court at Madras but also as an order made by the High Court of Kerala.

(6) All proceedings pending in the High Court of Travancore-Cochin immediately before the appointed day other than those certified by the Chief Justice of that High Court under sub-section (2) of Section 66 shall stand transferred to the High Court of Kerala, and any order made before the appointed day by the first mentioned High Court in any such proceedings shall for all purposes have effect, not only as an order of that High Court, but also as an order of the High Court of Kerala.

[*] Substituted for "Part C State" by 1 A.L.O., 1956 (1-11-1956).

61. Transfer of proceedings to Madhya Pradesh High Court.—(1) Such proceedings pending in the High Court of the existing State of Rajasthan immediately

before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court of Madhya Pradesh shall, as soon as may be after such certification, be transferred to the High Court of Madhya Pradesh.

(2) All proceedings pending in the High Court of Madhya Bharat or in the Court of the Judicial Commissioner for Bhopal or in the Court of the Judicial Commissioner for Vindhya Pradesh, immediately before the appointed day, shall stand transferred to the High Court of Madhya Pradesh.

(3) Any order made before the appointed day by any Court referred to in sub-section (1) or sub-section (2) shall for all purposes have effect not only as an order of that Court but also as an order of the High Court of Madhya Pradesh.

62. Transfer of proceedings to Mysore High Court.—(1) Except as hereinafter provided, neither the High Court of Bombay nor the High Court at Madras shall, as from the appointed day, have jurisdiction in respect of any territory transferred from the existing State of Bombay or the State of Madras, as the case may be, to the new State of Mysore.

(2) Such proceedings pending in the High Court of Hyderabad or the High Court at Bombay or Madras, immediately before the appointed day, as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court for the new State of Mysore (referred to in this Act as the Court of Mysore) shall, as soon as may be after such certification, be transferred to the High Court of Mysore.

(3) Notwithstanding anything contained in sub-sections (1) and (2) but save as hereinafter provided, the High Court of Bombay or, as the case may be, the High Court at Madras shall have, and the High Court of Mysore shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings, where any such proceedings seek any relief in respect of any order passed by the High Court at Bombay or Madras before the appointed day:

Provided that if after any such proceedings have been entertained by the High Court of Bombay or at Madras it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court of Mysore, he shall order that they shall be so transferred and such proceedings shall thereupon be transferred accordingly.

(4) Any order made by the High Court of Hyderabad before the appointed day in any proceedings transferred to the High Court of Mysore by virtue of sub-section (2) shall, for all purposes, have effect not only as an order of the High Court of Hyderabad, but also as an order made by the High Court of Mysore.

(5) Any order made by the High Court at Bombay or Madras—

(a) before the appointed day in any proceedings transferred to the High Court of Mysore by virtue of sub-section (2), or

(b) in any proceedings with respect to which the High Court of Bombay or at Madras retains jurisdiction by virtue of sub-section (3),

shall, for all purposes, have effect not only as an order of the High Court of Bombay or at Madras, but also as an order of the High Court of Mysore.

(6) All proceedings pending in the High Court of the existing State of Mysore immediately before the appointed day, shall stand transferred to the High Court of Mysore; and any order made before the appointed day by the first mentioned

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Section 62 — Note 1

(1) Appeal from Kollegal taluq transferred to District Judge at Mysore — That Court has power to transfer it to Civil Judge at Mysore for disposal under Section 13 of Madras Act as adapted by Mysore Government and as the Kollegal taluq has come within the jurisdiction of Mysore High Court since 1-11-56 and the Madras High Court ceased to have jurisdiction over that taluq. AIR 1966 Mys 49 (52, 53) = (1965) 2 Law Rep 234.

High Court in any such proceedings shall for all purposes have effect, not only as an order of that High Court, but also as an order of the High Court of Mysore.

63. Transfer of proceedings to Punjab High Court*.—(1) All proceedings pending in the High Court of Patiala and East Punjab States Union immediately before the appointed day shall stand transferred to the High Court for the new State of Punjab (referred to in this Act as the High Court of Punjab).

(2) Any order made before the appointed day by the High Court of Patiala and East Punjab States Union shall for all purposes have effect not only as an order of that Court, but also as an order made by the High Court of Punjab.

[*] Now known as Punjab and Haryana High Court—See Act 31 of 1966.

64. Transfer of proceedings to Rajasthan High Court.—(1) As from the appointed day, the High Court of Bombay shall have no jurisdiction in respect of the territory transferred from the existing State of Bombay to the new State of Rajasthan.

(2) Such proceedings pending in the High Court at Bombay or the High Court of Madhya Bharat immediately before the appointed day as are certified by the Chief Justice of that High Court, having regard to the place of accrual of the cause of action and other circumstances, to be proceedings which ought to be heard and decided by the High Court for the new State of Rajasthan (referred to in this Act as the High Court of Rajasthan) shall, as soon as may be after such certification, be transferred to the High Court of Rajasthan.

(3) All proceedings pending in the High Court of the existing State of Rajasthan immediately before the appointed day other than those certified under sub-section (1) of section 61 and all proceedings pending in the Court of the Judicial Commissioner for Ajmer immediately before the appointed day shall stand transferred to the High Court of Rajasthan.

(4) Any order made before the appointed day by any Court referred to in sub-section (2) or sub-section (3) in any proceedings transferred to the High Court of Rajasthan by virtue of sub-section (2) or sub-section (3) shall, for all purposes, have effect not only as an order of that Court, but also as an order of the High Court of Rajasthan.

65. High Court of Andhra Pradesh.—(1) As from the appointed day,—

(a) the jurisdiction of the High Court of the existing State of Andhra shall extend to the whole of the territories transferred to that State from the existing State of Hyderabad;

(b) the said High Court shall be known as the High Court of Andhra Pradesh; and

(c) the principal seat of the said High Court shall be at Hyderabad.

Section 63 — Note 1

(1) Where an application under Section 52 of the Pepsu Judicature Ordinance 2005 BK.. filed before the Pepsu High Court for a certificate that the case was a fit one for appeal to a Division Bench was dismissed by that Court the right of appeal so destroyed cannot be revived by Section 63 of the States Reorganisation Act on the integration of Pepsu with the State of Punjab. AIR 1960 Punj 29 (30) = ILR (1959) Punj 1559 (DB).

Section 64 — Note 1

(1) Where, in view of the change of jurisdiction under the Act, the appellate Court is at a different place from the first Court and the jurisdiction of the High Court over the place where the appellate Court sits remains what it was before the Act, while the jurisdiction of the High Court over the first Court is changed in such circumstances in order to give relief to parties whose cases are transferred from one High Court to another, it is necessary to assume that the relief by the appellate Court was given by the corresponding Court in the new State. AIR 1958 Raj 124 (126) = ILR (1958) 8 Raj 286 (DB).

Section 65 — Note 1

(1) The effect of Sections 50 and 65 of the S. R. Act was that all the proceedings pending in the defunct Hyderabad High Court and statutorily transferred to the Andhra Pradesh High Court became subject to its appellate jurisdiction and thereafter were governed by the procedure which obtained in the Andhra Pradesh High Court. Therefore even in a case statutorily transferred from Hyderabad to Andhra High Court a Letters Patent appeal from a decision of a single Judge of Andhra High Court will be maintainable. subject to the conditions prescribed

(2) All proceedings pending in the High Court of Hyderabad immediately before the appointed day, other than those certified by the Chief Justice of that High Court under sub-section (2) of section 59 or under sub-section (2) of section 62, shall stand transferred to the High Court of Andhra Pradesh.

(3) Any order made by the High Court of Hyderabad before the appointed day in any proceedings transferred to the High Court of Andhra Pradesh by virtue of sub-section (2) shall, for all purposes have effect not only as an order of the High Court of Hyderabad but also as an order made by the High Court of Andhra Pradesh.

(4) Any person who, immediately before the appointed day, is an advocate entitled to practise in the High Court of Hyderabad shall, as from the appointed day, be recognised as an advocate entitled to practise in the High Court of Andhra Pradesh:

Provided that if any such person makes, within one year from the appointed day, an application to the High Court of Bombay or to the High Court of Mysore for being recognised as an advocate entitled to practise in that High Court, he shall be so recognised, and on such recognition, he shall cease to be recognised as an advocate entitled to practise in the High Court of Andhra Pradesh.*

[*] Now under the Advocates Act, 1961, once enrolled, the Advocate can practise anywhere in any Court throughout India.

OBJECTS AND REASONS

"Sub-clause (1) of this clause has been amplified so as to make express provision for the transfer of the Andhra High Court to Hyderabad. This has been agreed to by the Legislative Assemblies of Andhra and Hyderabad, and further an express provision for the transfer will be necessary in supersession of section 28 (4) of the Andhra State Act, 1953.

A new provision has been made in this clause [see sub-section (4)] to the effect that persons who are now practising in the Hyderabad High Court will be entitled to practise as of right in the High Court of Andhra Pradesh, but they will have the option to choose within one year from the appointed day to practise either in the High Court of Bombay or in the High Court of Mysore."—J.C.R.

66. High Court for the areas added to Madras°.—(1) Except as hereinafter provided, the jurisdiction of the High Court at Madras shall, as from the appointed day, extend to the whole of the territories transferred to the State of Madras from the State of Travancore-Cochin.

(2) Such proceedings pending in the High Court of Travancore-Cochin immediately before the appointed day as are certified before that day by the Chief Justice of that High Court having regard to the place of accrual of the cause of action and other circumstances to be proceedings which ought to be heard and decided by the High Court at Madras shall, as soon as may be after such certification, be transferred to the High Court at Madras.

Section 65 — Note 1 (contd.)

by R. 95 of the Appellate Side Rules. AIR 1958 Andh Pra 60 (62) = ILR (1957) Andh Pra 660 (DB).

(2) The provision contained in Section 65 (2) conferring jurisdiction on the High Court of Andhra Pradesh to hear and decide all proceedings which are not certified as proceedings to be heard and decided by the High Court of Mysore is a supplemental, incidental and consequential provision within the meaning of Article 4 of the Constitution which Parliament was competent to enact. AIR 1960 Mys 310 (311).

(3) Madras Vexatious Litigation (Prevention) Act, 8 of 1949 which was passed by the Madras Legislature conferred a special jurisdiction on the Madras High Court and was not an inherent jurisdiction of that court. As the jurisdiction of the Act was restricted to presidency towns the Andhra Pradesh High Court which possesses the same jurisdiction as the former Madras High Court, cannot exercise the jurisdiction under that Act as there is no presidency town in Andhra Pradesh. **AIR 1965 SC 1827 (1830, 1831, 1832) = (1965) 2 SCJ 449. (AIR 1962 Andh Pra 4, Reversed.)**

Section 66 — Note 1

(1) Appeal transferred to Madras High Court under States Reorganisation Act — Appellant cannot claim any right to have his appeal heard by Full Bench of Madras High Court. AIR 1962 Mad 304 (306, 307) = (1962) 1 Mad LJ 376.

(3) Notwithstanding anything contained in sub-sections (1) and (2), but save as hereinafter provided, the High Court of Kerala shall have, and the High Court at Madras shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court of Travancore-Cochin before the appointed day:

Provided that if, after any such proceedings have been entertained by the High Court of Kerala, it appears to the Chief Justice of that High Court that they ought to be transferred to the High Court at Madras, he shall order that they shall be so transferred, and such proceedings shall thereupon be transferred, accordingly.

(4) Any order made—

(a) by the High Court of Travancore-Cochin before the appointed day in any proceedings transferred to the High Court at Madras by virtue of sub-section (2); or

(b) by the High Court of Kerala in any proceedings with respect to which that High Court retains jurisdiction by virtue of sub-section (3),

shall, for all purposes, have effect, not only as an order of the High Court of Travancore-Cochin or the High Court of Kerala, as the case may be, but also as an order made by the High Court at Madras.

(5) Subject to any rule made or direction given by the High Court at Madras, any such person who immediately before the appointed day is an advocate entitled to practise in the High Court of Travancore-Cochin as may be specified in this behalf by the Chief Justice of the High Court at Madras having regard to the transfer of territories from Travancore-Cochin to Madras, shall be recognised as an advocate entitled to practise in the High Court at Madras.

[°] Now known as Tamil Nadu—See Act 53 of 1968.

67. Right to appear or act in proceedings transferred to other High Courts.—Any person who immediately before the appointed day is an advocate entitled to practise, or an attorney entitled to act, in the High Court for an existing State and was authorised to appear or to act in any proceedings transferred from that High Court to any other High Court under any of the foregoing provisions of this Part shall have the right to appear or to act, as the case may be, in the other High Court in relation to those proceedings.

68. Interpretation.—For the purposes of sections 59 to 66,—

(a) proceedings shall be deemed to be pending in a Court until that Court has disposed of all issues between the parties, including any issues with respect to the taxation of the costs of the proceedings and shall include appeals, applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petitions for writs;

(b) references to a High Court shall be construed as including references to a Judge or Division Court thereof, and references to an order made by a Court or a Judge shall be construed as including references to a sentence, judgment or decree passed or made by that Court or Judge.

69. Savings.—Nothing in this Part shall affect the application to the High Court for a new State of any provisions of the Constitution, and this Part shall have effect subject to any provision that may be made on or after the appointed day with respect to that High Court by any Legislature or other authority having power to make such provision.

Section 69 — Note 1

(1) The argument that prior to 1-11-1956. the High Court of Bombay could exercise its power under Art. 227 of the Constitution in respect of the orders made by the Bombay Revenue Tribunal and that this constitutional power was saved to the High Court of Bombay by Section 69 is not correct. The power of superintendence under Article 227 could be exercised by the respective High Court throughout the territories of the new States only as from 1-11-1956. AIR 1959 Mys 108 (111) = ILR (1959) Mys 150 (DB).

(2) The jurisdiction under clause 16 of the Bombay Letters Patent and now transferred to Mysore High Court by Section 52 of S. R. Act is as stated in S. 69 subject to legislation by appropriate legislature. AIR 1965 Mys 76 (84) (DB).

PART VI
AUTHORISATION OF EXPENDITURE

70. Authorisation of expenditure of new States.—In the case of every new State, the Governor or Rajpramukh of the corresponding State may at any time before the appointed day authorise such expenditure from the Consolidated Fund of the new State as he deems necessary for any period not extending beyond the 31st day of March, 1957:

Provided that the Governor of the new State may, after the appointed day, authorise such further expenditure from the Consolidated Fund of the State as he deems necessary for the said period.

71. Appropriation of moneys for expenditure in transferred territories under existing Appropriation Acts.—(1) As from the appointed day, any Act passed by the Legislature of the State of Andhra or Madras before that day for the appropriation of any money out of the Consolidated Fund of the State to meet any expenditure in respect of any part of the financial year 1956-57 shall have effect also in relation to the transferred territory in that State, and it shall be lawful for the State Government to spend any amount in such transferred territory out of the amount authorised by such Act to be expended for any service in that State.

(2) The Governor of Andhra Pradesh or of Madras may, after the appointed day, authorise such expenditure from the Consolidated Fund of the State as he deems necessary for any purpose or service in the transferred territory of the State for any period not extending beyond the 31st day of March, 1957.

72. Reports relating to the accounts of certain States.—(1) Where the whole or any part of the territory of an existing State has been transferred to another existing State or to a new State by the provisions of Part II, the reports of the Comptroller and Auditor-General of India referred to in Cl. (2) of Art. 151 relating to the accounts of that existing State in respect of any period prior to the appointed day, shall be submitted to the Governor of such State or of each of such States as the President may by order specify* and the Governor shall thereupon cause them to be laid before the Legislature of that State.

(2) The President may by order—

(a) declare any expenditure incurred out of the Consolidated Fund of Bombay, Madhya Pradesh or Punjab or of any Part B or Part C States on any service during the financial year 1955-56 or any earlier financial year in excess of the amount granted for that service and for that year as disclosed in the reports referred to in sub-section (1) to have been duly authorised, and

(b) provide for any action to be taken on any matter arising out of the said reports.

[*] See S.R.O. 3180 dated 28-12-1956 published in Gaz. of Ind., 1956, Pt. II, Sec. 3, Extra., page 2724.

73. Allowances and privileges of Governors of certain States.—The allowances and privileges of the Governor of Andhra Pradesh or of Madras or of each new State shall, until provision in that behalf is made by Parliament by law under clause (3) of Article 158, be such as the President may, by order,* determine.

[*] For the States Reorganisation (Governors' Allowances and Privileges) Order, 1957, see S.R.O. 693 dated 1-3-1957 published in Gaz. of Ind., 1957, Pt. II, Sec. 3, Extra., page 1089 (amended by G.S.R. 364 of 1968, Gaz. of Ind., 1968, Pt. II, Sec. 3 (i), Extra., page 77 and G.S.R. 1866 dated 31-10-1970, Gaz. of Ind., 1970, Pt. II, Sec. 3 (i), Extra., page 863).

For States Reorganisation (Governors' Allowances and Privileges) Supplementary Order, 1966, see G.S.R. 1669 dated 29-10-1966, Gaz. of Ind., 29-10-1966, Pt. II, S. 3 (i), Extra., page 795.

74. Distribution of revenues.—(1) Section 3 of the Union Duties of Excise (Distribution) Act, 1953 and paragraphs 3 and 5 of the Constitution (Distribution of Revenues) Order, 1953, shall, in respect of the financial year 1956-57, have effect in the modified form set out in the Fourth Schedule.

(2) There shall be charged on the Consolidated Fund of India in respect of each of the three financial years 1957-58, 1958-59 and 1959-60 as grants-in-aid of—

(a) the State of Bombay, the sum, if any, by which 8.58 per cent of the total of the amounts payable to that State under Articles 270 and 272 falls short of 248.04 lakhs of rupees;

(b) the State of Kerala, the sum, if any, by which 61.91 per cent of the total of the amounts payable to that State under the said Articles falls short of 232.38 lakhs of rupees;

(c) the State of Madras, the sum, if any, by which 2.97 per cent of the total of the amounts payable to that State under the said Articles falls short of 24.65 lakhs of rupees;

(d) the State of Mysore, the sum, if any, by which 46.75 per cent of the total of the amounts payable to that State under the said Articles falls short of 289.80 lakhs of rupees.

PART VII

APPORTIONMENT OF ASSETS AND LIABILITIES OF CERTAIN PART A AND PART B STATES

75. Application of Part.—The provisions of this Part shall apply in relation to the apportionment of the assets and liabilities immediately before the appointed day of every Part A or Part B State the whole or any part of whose territories is transferred to another State or becomes *[Union territory] by virtue of the provisions of Part II; and the expression "existing State" shall accordingly be construed to mean any such Part A State or Part B State.

[*] Substituted for "Part C State" by 1 A.L.O., 1956 (1-11-1956).

76. Land and goods.—(1) Subject to the other provisions of this Part, all land and all stores, articles and other goods belonging to an existing State shall—

(a) if within the existing State, pass to the successor State in which they are situated; or

(b) if outside the existing State, pass to the successor State or if there be two or more successor States, to the principal successor State:

Provided that where there are two or more successor States and the Central Government is of opinion that any goods or class of goods should be distributed among them otherwise than according to the situation of the goods, the Central Government may issue such directions as it thinks fit for a just and equitable distribution of the goods and the goods shall pass to the successor States accordingly.

(2) Any unissued stores of any class in an existing State shall pass to the successor State, or if there be two or more successor States, shall be divided between them in proportion to the total indents for stores of that class made in the period of three years ending with the 31st day of March, 1956, for the territories of the existing State included respectively in each of those successor States excluding the indents relating to the Secretariat and offices of Heads of Departments having jurisdiction over the whole of the existing State:

Provided that nothing in this sub-section shall apply to stores held for specific purposes, such as use or utilisation in particular institutions, workshops or undertakings or on particular works under construction.

(3) In this section, the expression 'land' includes immovable property of every kind and any rights in or over such property, and the expression "goods" does not include coins, bank notes and currency notes.

Section 76 — Note 1

(1) Land acquired for State Transport Corporation, Bombay — After reorganisation of States, assets of that Corporation devolving on State of Mysore — State Transport Department of Mysore is entitled to take possession of land though it was originally intended to be delivered to State Transport Corporation, Bombay. AIR 1962 Mys 169 (171) (DB).

77. Treasury and bank balances.—The total of the cash balances in all treasuries of an existing State and the credit balances of that State with the Reserve Bank of India immediately before the appointed day shall pass to the successor State, or, if there be two or more successor States, be divided between them according to the population ratio:

Provided that for the purpose of such division, there shall be no transfer of cash balances from any treasury to any other treasury and the apportionment shall be effected by adjusting the credit balances of the successor States in the books of the Reserve Bank of India on the appointed day:

Provided further that if any successor State has no account with the Reserve Bank of India the adjustment shall be made in such manner as the Central Government may by order direct.

78. Arrears of taxes.—The right to recover arrears of any tax or duty on property, including arrears of land revenue, shall belong to the successor State in which the property is situated, and the right to recover arrears of any other tax or duty shall belong to the successor State in whose territories the place of assessment of that tax or duty is included.

79. Right to recover loans and advances.—(1) The right to recover any loans or advances made before the appointed day by an existing State to any local body, society, agriculturist or other person in an area within that State shall belong to the successor State in which that area is included.

(2) The right to recover any loans or advances made before the appointed day by an existing State to any person or institution outside that State shall belong to the successor State or, if there be two or more successor States, to the principal successor State:

Provided that where there are two or more successor States, any sum recovered in respect of any such loan or advance shall be divided between all the successor States according to the population ratio.

80. Credits in certain funds.—The investments in the cash balance investments account, the famine relief fund and the general fund of an existing State and the sums at the credit of an existing State in the Central Road Fund shall pass to the successor State or if there be two or more successor States, be divided between them according to the population ratio; and the investments in any special fund the objects of which are confined to a local area in an existing State shall pass to the successor State in which that area is included.

81. Assets and liabilities of State undertakings.—(1) The assets and liabilities relating to any commercial or industrial undertaking of an existing State shall pass to the successor State in which the undertaking is located.

(2) Where a Depreciation Reserve Fund is maintained by an existing State for any commercial or industrial undertaking, the securities held in respect of investments made from that fund shall pass to the successor State in which the undertaking is located.

82. Public debt.—(1) The public debt of the existing State of Hyderabad attributable to loans raised by the issue of Government securities and outstanding with the public immediately before the 31st day of October, 1956, shall as from that day be the debt of the Union, and immediately on such transfer of the debt,

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Section 78 — Note 1

(1) Arrears of tax — The word "arrears" in respect of tax has been used in Section 78 in the sense of dues or what has become due by way of tax and that does not depend on assessment proceedings or quantification of the amount. **1972 Tax LR 2368 (2370) = 29 STC 215 (SC).** (1967 LLJ 893, **Reversed.**)

Section 81 — Note 1

(1) Irrespective of Section 34 of the Road Transport Corporation Act which authorises the Government to issue instructions to the Transport Corporation, Sec. 81 of the S. R. Act operates to transfer the assets and liabilities relating to any commercial or industrial undertaking of an existing State to the successor State in which the undertaking is located. AIR 1959 Andh Pra 292 (301) = ILR (1958) Andh Pra 437 (DB).

the Central Government shall be deemed to have made a loan to that State of an amount equal to the debt so transferred on the same terms in regard to interest and repayment as are applicable to the loans so raised by that State.

(2) The public debt of any other existing State attributable to loans raised by the issue of Government securities and outstanding with the public immediately before the appointed day shall, as from that day, be the debt of the successor State or, if there be two or more successor States, be the debt of such one of them as the Central Government may, by order, specify, and in the latter case,—

(a) the other successor States shall be liable to pay to the successor State so specified their shares of the sums due from time to time for the servicing and repayment of the debt, and

(b) for the purpose of determining the said shares, the debt shall be deemed to be divided between the successor States as if it were a debt referred to in sub-section (3).

(3) The public debt of an existing State attributable to loans taken from the Central Government, the Reserve Bank of India or any other bank before the appointed day, including in the case of Hyderabad the loan deemed to have been made by the Central Government under sub-section (1), shall pass to the successor State, or if there be two or more successor States, be divided between them in proportion to the total expenditure on all capital works and other capital outlays incurred up to the appointed day in the territories of the existing State included respectively in each of those successor States:

Provided that for the purposes of such division, only expenditure on assets for which capital accounts have been kept shall be taken into account:

Provided further that any loan taken from the Central Government by the Government of an existing State before the appointed day in connection with the construction of buildings, roads or other works for the capital of a new State or any State affected by the provisions of Part II or for purposes incidental thereto shall, to the extent of the expenditure so incurred until that day, be wholly the liability of the successor State in which the capital is included.

(4) Where a sinking fund or depreciation fund is maintained by an existing State for the repayment of any loan raised by it, the securities held in respect of investments made from that fund shall pass to the successor State or, if there be two or more successor States, be divided between them in the same proportion as the public debt referred to in sub-section (3).

(5) In this section, the expression "Government security" means a security created and issued by a State Government for the purpose of raising a public loan and having any of the forms specified in, or prescribed under, clause (2) of section 2 of the Public Debt Act, 1944.

83. Refund of taxes collected in excess.—The liability of an existing State to refund any tax or duty on property, including land revenue, collected in excess shall be the liability of the successor State in which the property is situated, and the liability of an existing State to refund any other tax or duty collected in excess shall be the liability of the successor State in whose territories the place of assessment of that tax or duty is included.

84. Deposits.—The liability of an existing State in respect of any civil deposit or local fund deposit shall, as from the appointed day, be the liability of the successor State in whose area the deposit has been made.

85. Provident funds.—The liability of an existing State in respect of the provident fund account of a Government servant in service on the appointed day

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Section 84 — Note 1

(1) Contract with an 'existing state' for extraction of Kattha from forest trees — Security deposit — Contract completed after the transfer of the region whereat the contract was to be performed to 'successor State' — Demand for refund of the security deposit made to the successor State, refused — Suit for recovery of the said amount against the successor State is maintainable — Though the deposit could fall in the category of civil deposit within Section 84 that did not exclude the liability of the successor State under Section 87. AIR 1964 Madh Pra 213 (214) (DB).

shall, as from that day, be the liability of the successor State to which that Government servant is permanently allotted.

86. Pensions.—The liability of the existing States in respect of pensions shall pass to or, be apportioned between, the successor States in accordance with the provisions contained in the Fifth Schedule.

87. Contracts.—(1) Where before the appointed day an existing State has made any contract in the exercise of its executive power for any purposes of the State, that contract shall be deemed to have been made in the exercise of the executive power—

(a) if there be only one successor State,—of that State;

(b) if there be two or more successor States and the purposes of the contract are, as from the appointed day, exclusively purposes of any one of them,—of that State; and

(c) if there be two or more successor States and the purposes of the contract are, as from that day, not exclusively purposes of any one of them,—of the principal successor State;

and all rights and liabilities which have accrued, or may accrue, under any such contract shall, to the extent to which they would have been rights or liabilities of the existing State, be rights or liabilities of the successor State or the principal successor State specified above:

Provided that in any such case as is referred to in clause (c), the initial allocation of rights and liabilities made by this sub-section shall be subject to such financial adjustment as may be agreed upon between all the successor States concerned, or in default of such agreement, as the Central Government may by order direct.

(2) For the purposes of this section, there shall be deemed to be included in the liabilities which have accrued or may accrue under any contract—

(a) any liability to satisfy an order or award made by any Court or other tribunal in proceedings relating to the contract; and

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Section 86 — Note 1

(1) An employee of old M. P. State retired before reorganisation and settled down in Nagpur and had been drawing his pension from Nagpur Treasury. The petitioner claimed increases in pension as granted by present M. P. Government from the Maharashtra Government.

Held, that the State of Bombay (now Maharashtra) which was the successor State to the then existing State of Madhya Pradesh would not be liable to give the increase in the pension which had been granted by the present State of Madhya Pradesh to its pensioners and the petitioner could not lay a claim for such increase in the pension as had been made by the present State of Madhya Pradesh. Section 86 of the Act deals with the liability of the existing State and any liability which is incurred after 1-11-1956 by a successor State could not be said to be a liability of the existing State and as such, one successor State will not be bound by the liability which has been created by another successor State. AIR 1970 Bom 117 (121) = 72 Bom LR 258.

Section 87 — Note 1

(1) Held, that the case of the petitioners was not governed by Section 87 of the Act as the claim made by the petitioners was not one arising out of an alleged breach of any term of the contract between them and the State Government. AIR 1959 Bom 363 (366) = ILR (1959) Bom 1267 (DB).

(2) The word liability in its widest import means an obligation or duty to do something or to refrain from doing something. There is no reason why any restricted meaning should be given to the word liability used in this Act. The Parliament intended to include in the word liability not only a financial obligation but also obligations of every other kind, including one of reinstating a Government servant wrongly dismissed. AIR 1959 Bom 363 (365) = ILR (1959) Bom 1267 (DB).

(3) Suit for arrears of pay and allowances by a servant of former M. P. State decreed — Liability to pay decretal amount — Suit was not in respect of an "actionable wrong other than breach of contract" within the meaning of Section 88 but was on a contract. either express or implied on the basis of terms of appointment and conditions of service prescribed by the Government and accepted by plaintiff — Suit was covered by Section 87 (C) and hence the new State of M. P. as the principal of two successor States was liable for the plaintiff's claim. ILR (1968) Bom 1024 (1050).

(4) Contract with an 'existing State' for extraction of Kattha from forest trees — Security deposit — Contract completed after the transfer of the region whereat the contract was to be performed to "successor State" — Demand for refund of the security deposit made to the successor State, refused — Suit for recovery of the said amount against the successor State — **Held** maintainable. AIR 1964 Madh Pra 213 (214) (DB).

(b) any liability in respect of expenses incurred in or in connection with any such proceedings.

(3) This section shall have effect subject to the other provisions of this Part relating to the apportionment of liabilities in respect of loans, guarantees and other financial obligations; and bank balances and securities shall notwithstanding that they partake of the nature of contractual rights, be dealt with under those provisions.

OBJECTS AND REASONS

"Rights and liabilities under subsisting contracts and outstanding liabilities in respect of actionable wrongs are matters of immediate concern to the public. Since it is desirable that the private party should know with which successor State he would have to deal after reorganisation, general provisions are made in clauses 82 and 83 (now Sections 87 and 88) for this purpose. Where there is more than one successor State to an existing State and the rights and liabilities in respect of a contract or actionable wrong cannot be locally allocated to a particular successor State, it is allocated to the principal successor State subject to subsequent financial adjustment between that State and the other successor State which may be concerned in the matter."—S.O.R.

88. **Liability in respect of actionable wrong.**—Where, immediately before the appointed day, an existing State is subject to any liability in respect of an actionable wrong other than breach of contract, that liability shall—

(a) if there be any one successor State, be a liability of that State;

(b) if there be two or more successor States and the cause of action arose wholly within the territories which as from that day are the territories of one of them, be a liability of that successor State; and

(c) in any other case, be initially a liability of the principal successor State, but subject to such financial adjustment as may be agreed upon between all the successor States concerned, or in default of such agreement, as the Central Government may by order direct.

OBJECTS AND REASONS

See under Section 87.

89. **Liability as guarantor of co-operative society.**—Where, immediately before the appointed day, an existing State is liable as guarantor in respect of any liability of a registered co-operative society, that liability of the existing State shall,—

(a) if there be only one successor State, be a liability of that State;

(b) if there be two or more successor States and the area of the society's operations is limited to the territories which as from that day are the territories of one of them, be a liability of that successor State; and

(c) in any other case, be a liability of the principal successor State:

Section 88 — Note 1

(1) The term "actionable wrong" means an illegal or unauthorised act infringing a legal right of another affording him a ground for action in law. Where the petitioners who are citizens of India are challenging the orders of their dismissal on the ground of infringement of Article 311 (2) of the Constitution, the wrong complained of by the petitioners is an actionable wrong within the meaning of Section 88 of the Act and they would be entitled to the protection under Article 226. AIR 1959 Bom 363 (367) = ILR (1959) Bom 1267 (DB).

(2) Applicability — Cause of action, meaning of — Government servants under former Madhya Pradesh State serving in districts now forming part of Bombay State — Dismissal prior to 1-11-56 by Madhya Pradesh State — Petitions under Articles 226 and 227 challenging orders of dismissal against Bombay State filed in Bombay High Court — Petitions held were maintainable. AIR 1959 Bom 363 (367, 368) = ILR (1959) Bom 1267 (DB).

(3) The term 'cause of action' in Sec. 88 (b) as is generally understood, means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court. AIR 1959 Bom 363 (367) = ILR (1959) Bom 1267 (DB).

(4) Section 88 operates only where the cause of action for the suit arises wholly in the territory of one of the two successor States after States, reorganisation and cannot apply where the cause of action arises partly in one successor State and partly in another successor State. In such a case Section 87 would apply. ILR (1968) Bom 1024 (1042, 1043).

Provided that in any such case as is referred to in clause (c), the initial allocation of liabilities under this section shall be subject to such financial adjustment as may be agreed upon between all the successor States, or in default of such agreement, as the Central Government may by order direct.

90. Items in suspense.—If any item in suspense is ultimately found to affect an asset or liability of the nature referred to in any of the foregoing provisions of this Part, it shall be dealt with in accordance with that provision.

91. Residuary provision.—The benefit or burden of any assets or liabilities of an existing State not dealt with in the foregoing provisions of this Part shall—

(a) if there be only one successor State, pass to that State, and

(b) if there be two or more successor States, pass to the principal successor State in the first instance, subject to such financial adjustment as may be agreed upon between all the successor States before the 1st day of October, 1957, or in default of such agreement, as the Central Government may by order direct.

92. Power of the Central Government to order allocation or adjustment in certain cases.—Where by virtue of any of the provisions of this Part, any of the successor States becomes entitled to any property or obtains any benefits or becomes subject to any liability, and the Central Government is of opinion, on a reference made within a period of three years from the appointed day by any State that it is just and equitable that that property or those benefits should be transferred to or shared with, one or more of the other successor States, or that a contribution towards that liability should be made by one or more of the other successor States, the said property or benefits shall be allocated in such manner, or the other successor State or States shall make to the State primarily subject to the liability such contribution in respect thereof, as the Central Government may, after consultation with the State Governments concerned by order determine.

OBJECTS AND REASONS

"The division of assets and liabilities is bound to be a complicated matter and it may well be anticipated that the general provisions made in this part will not cover all possible cases fully and satisfactorily. This section accordingly vests the Central Government with power to make such adjustments as may be found just or equitable. It is proposed that this power should be exercisable by the Central Government only on a reference being made by the aggrieved State within a period of three years from the appointed day and only after consultation with all the State Governments concerned."—S.O.R.

93. Certain expenditure to be charged on the Consolidated Fund.—All sums payable by the Union to any State or by any State to any other State or to the Union by virtue of the provisions of this Part shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State by which such sums are payable.

PART VIII

APPORTIONMENT OF CERTAIN ASSETS AND LIABILITIES OF THE UNION

94. Definitions.—In this Part,—

(a) "existing State" means any of the existing Part C States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh;

Section 91 — Note 1

(1) Family grant by Travancore State continued by United State of Travancore-Cochin — Grant not repudiated by successive States till Constitution came into force — Suit by grantee's family against Kerala State — **Held** that Section 91 (a) of the States Reorganisation Act, 1956 was sufficient to fasten the liability of the Travancore-Cochin State on the Kerala State. and plaintiff's right to the grant could be adjudged and enforced by municipal courts of the State. 1960 Ker LJ 1461 (1466).

(2) Act of State — Formation of State of Travancore-Cochin was act of State but not formation of Kerala State — Plaintiff's claim to annuity recognised by State of Travancore-Cochin — Suit for such claim against Kerala State entertainable by Municipal Court. AIR 1964 Ker 123 (124) (DB).

(b) "Union purposes" mean the purposes of Government relatable to any of the matters mentioned in the Union List.

95. Passing of certain assets and liabilities of the Union to successor States.—Subject to the other provisions of this Part,—

(a) such of the assets of the Union within an existing State as are immediately before the appointed day held by the Union for purposes of the governance of that State shall, as from that day, pass to the successor State, unless the purposes for which the assets are so held are Union purposes; and

(b) all liabilities of the Union arising out of, or in relation to, the governance of an existing State shall, as from the appointed day, be liabilities of the successor State, unless the liabilities are relatable to the Union purpose.

96. Arrears of taxes.—The right to recover arrears of any tax (including land revenue) due in an existing State, being a tax enumerated in the State List, shall pass to the successor State.

97. Loans and advances.—The right to recover any loans or advances made before the appointed day to any local body, society, agriculturist or other person in an existing State shall belong to the successor State unless the loan or advance was made in connection with a Union purpose.

98. Debts due to Central Government.—Any debt of an existing State attributable to any loan given by the Central Government on or after the 1st day of April, 1954, and outstanding immediately before the appointed day shall be a debt due by the successor State to the Central Government.

99. Provident Fund.—The liability of the Union in respect of the provident fund account of a Government servant serving immediately before the appointed day in an existing State under the administrative control of the Lieutenant-Governor or Chief Commissioner thereof shall, as from that day, be the liability of the successor State:

Provided that the Central Government shall transfer to the successor State funds equal to the liability of the Union as on the appointed day.

100. Pensions.—Where a Government servant under the administrative control of the Lieutenant-Governor or Chief Commissioner of an existing State has, before the appointed day, retired or proceeded on leave preparatory to retirement, any outstanding claim in respect of his pension shall be settled by the successor State; but the liability in respect of the pension sanctioned to any such Government servant, whether before or after the appointed day, shall be the liability of the Union.

101. Contracts.—(1) Any contract made before the appointed day by the Union in the exercise of its executive power for purposes of the governance of an existing State shall, as from that day, be deemed to have been made in the exercise of the executive power of the successor State, unless the purposes of the contract are Union purposes; and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights and liabilities of the Union if this Act had not been passed, be rights and liabilities of the successor State.

(2) The provisions of sub-sections (2) and (3) of section 87 shall apply in relation to any such contract as they apply in relation to a contract to which sub-section (1) of that section applies.

Section 101 — Note 1

(1) N stood for election to the Legislative Assembly of the M. P. State. At the time he filed his nomination paper he had entered into contracts with the Government of the State of Bhopal and which had, by the fiction of Section 101, become the contracts of the Government of M. P. State. It was held that N held the contracts from the appropriate Government within Sec. 7 (d) of the Representation of the People Act and in coming to that conclusion there was no question of the provision of Section 101 and the fiction contained therein being incorporated into the Representation of the People Act before it became effective. AIR 1959 Madh Pra 58 (62) (DB)

PART IX
PROVISIONS AS TO CERTAIN CORPORATIONS AND INTER-STATE AGREEMENTS AND ARRANGEMENTS

102. Provision as to certain State Financial Corporations.—(1) As from the appointed day, the Financial Corporations established under the State Financial Corporations Act, 1951, for the existing States of Madhya Bharat, Punjab, Rajasthan and Travancore-Cochin shall be deemed to be the Financial Corporations established under the said Act for the new States of Madhya Pradesh, Punjab, Rajasthan and Kerala, respectively.

(2) The States of Kerala, Madhya Pradesh and Pajasthan shall be liable to pay to the States of Madras, Rajasthan and Madhya Pradesh, respectively, on account of the share of each of the last-named States in the paid-up capital of the Financial Corporations for the existing States of Travancore-Cochin, Madhya Bharat and Rajasthan, respectively, such amount as the Central Government may by order determine.

(3) As from the appointed day, the Financial Corporations established under the State Financial Corporations Act, 1951, for the existing States of Andhra and Hyderabad shall stand amalgamated and shall be deemed to be the Financial Corporation established under the said Act for the State of Andhra Pradesh.

(4) After consulting the Governments of the existing States of Andhra and Hyderabad, the Central Government may, before the appointed day, by notified order,* provide for the constitution of the Board of Directors of the Financial Corporation for the State of Andhra Pradesh and for such consequential, incidental and supplemental matters as may, in the opinion of the Central Government, be necessary to give effect to the provisions of sub-section (3).

(5) The State of Andhra Pradesh shall be liable to pay to each of the new States of Mysore and Bombay on account of its share of the paid-up capital of the Financial Corporation for the existing State of Hyderabad such amount as the Central Government may, by order, determine.

(6) As from the appointed day, the Financial Corporations established under the State Financial Corporations Act, 1951, for the existing States of Bombay and Saurashtra shall stand amalgamated and shall be deemed to be the Financial Corporation established under the said Act for the new State of Bombay.

(7) After consulting the Governments of the existing States of Bombay and Saurashtra, the Central Government may, before the appointed day, by notified order,† provide for the constitution of the Board of Directors of the Financial Corporation for the new State of Bombay and for such consequential, incidental and supplemental matters as may, in the opinion of the Central Government, be necessary to give effect to the provisions of sub-section (6).

(8) The new State of Bombay shall be liable to pay to each of the new States of Mysore and Rajasthan on account of its share of the paid-up capital of the Financial Corporation for the existing State of Bombay such amount as the Central Government may, by order, determine.

[*] For the Andhra Pradesh State Financial Corporation Order, 1956, see S.R.O. 2512 dated 29-10-1956 published in Gaz. of Ind., 1956, Extra., Pt. II, Sec. 3, p. 2187.

[†] For the Bombay State Financial Corporation Order, 1956, see S.R.O. 2513 dated 29-10-1956, ibid, page 2191.

103. Provisions as to the Madras Industrial Investment Corporation.—(1) As from the appointed day, the Madras Industrial Investment Corporation constituted for the existing State of Madras shall be deemed to have been constituted for that State with its area as altered by the provisions of Part II.

(2) The State of Madras° shall be liable to pay to each of the new States of Kerala and Mysore on account of its share of the paid-up capital of the said Corporation such amount as the Central Government may, by order, determine.

[°] Now known as Tamil Nadu—See Act 53 of 1968.

104. Amendment of Act 2 of 1934.—[Not printed.]

105. Amendment of Act 6 of 1942.—[Not printed.]

106. Provision as to certain State Electricity Boards and apportionment of their assets and liabilities.—(1) The State Electricity Board constituted under the Electricity (Supply) Act, 1948, for any of the existing States of Bombay, Madhya Pradesh and Saurashtra shall, as from the appointed day, continue to function in those areas in respect of which it was functioning immediately before that day, subject to the provisions of this section and to such directions as may from time to time be issued by the Central Government.

(2) Any directions issued by the Central Government under sub-section (1) in respect of any such Board shall include a direction that the said Act shall in its application to that Board have effect subject to such exceptions and modifications as the Central Government thinks fit.

(3) A State Electricity Board continued under sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on, the 1st day of November, 1957, or such earlier date as the Central Government may by order appoint, and upon such dissolution, its assets and liabilities shall,—

(a) in the case of the Board for Saurashtra, pass to the State of Bombay, and

(b) in the case of the Board for the existing State of Bombay or Madhya Pradesh, be apportioned between the successor States in such manner as may be agreed upon between them within one year of the dissolution of the Board or if no agreement is reached, in such manner as the Central Government may by order determine.

(4) Nothing in the preceding provisions of this section shall be construed as preventing the Government of any of the successor States to the existing States of Bombay, Madhya Pradesh and Saurashtra from constituting at any time after the appointed day a State Electricity Board for that successor State under the provisions of the said Act; and if such a Board is so constituted before the dissolution of a Board continued under sub-section (1) and functioning in any part of that successor State,—

(a) provision may be made by order of the Central Government enabling the new Board to take over from the existing Board all or any of its undertakings, assets and liabilities in that State; and

(b) upon the dissolution of the existing Board, any assets and liabilities which would otherwise have passed to the successor State by or under the provisions of sub-section (3) shall pass to the new Board instead of to the successor State.

107. Continuance of arrangements in regard to generation and supply of electric power and supply of water.—If it appears to the Central Government that the arrangement in regard to the generation or supply of electric power or the supply of water for any area or in regard to the development of any project for such generation or supply has been or is likely to be modified to the disadvantage of that area by reason of the fact that it has been transferred by the provisions of Part II from the State in which the power stations and other installations for the generation and supply of such power, or the catchment area reservoirs and other works for the supply of water, as the case may be, are located, the Central Government may give such directions as it deems proper to the State Government or other authority concerned for the maintenance, so far as practicable, of the previous arrangement.

108. Continuance of agreements and arrangements relating to certain irrigation, power or multipurpose projects.—(1) Any agreement or arrangement entered into between the Central Government and one or more existing States or between two or more existing States relating to—

(a) the administration, maintenance and operation of any project executed before the appointed day, or

(b) the distribution of benefits, such as, the right to receive and utilise water or electric power, to be derived as a result of the execution of such project,

which was subsisting immediately before the appointed day shall continue in force, subject to such adaptations and modifications, if any (being of a character not affecting the general operation of the agreement or arrangement), as may be agreed upon between the Central Government and the successor State concerned or between the successor States concerned, as the case may be, by the 1st day of November, 1957, or, if no agreement is reached by the said date, as may be made therein by order of the Central Government.

(2) Where a project concerning one or more of the existing States affected by the provisions of Part II has been taken in hand, but not completed, or has been accepted by the Government of India for inclusion in the Second Five-Year Plan before the appointed day, neither the scope of the project nor the provisions relating to its administration, maintenance or operation or to the distribution of benefits to be derived from it shall be varied,—

(a) in the case where a single successor State is concerned with the project after the appointed day, except with the previous approval of the Central Government, and

(b) in the case where two or more successor States are concerned with the project after that day, except by agreement between those successor States, or if no agreement is reached, except in such manner as the Central Government may by order direct,

and the Central Government may from time to time give such directions as may appear to it to be necessary for the due completion of the project and for its administration, maintenance and operation thereafter.

(3) In this section, the expression "project" means a project for the promotion of irrigation, water-supply or drainage or for the development of electric power or for the regulation or development of any inter-State river or river valley.

109. General provision as to statutory corporations.—(1) Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate has been constituted under a Central Act, State Act or Provincial Act for an existing State the whole or any part of which is by virtue of the provisions of Part II transferred to any other existing State or to a new State, then, notwithstanding such transfer, the body corporate shall, as from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such direction as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate.

Section 109 — Note 1

(1) Charity Commissioner appointed under the provisions of Bombay Public Trusts Act is a Corporation sole for all purposes including the hearing of appeal under S. 70 of the Bombay Public Trusts Act. (1959) 38 Mys LJ 258 (263).

(2) Appeal to Charity Commissioner under S. 70 of Bombay Public Trusts Act before reorganisation of States — Even after reorganisation he has power to hear such appeal from 4 districts transferred to Mysore State by virtue of Section 109. (1959) 38 Mys LJ 258 (263).

(3) Section 109 which indicates that a competent law could make other provisions in respect of the matter covered by its sub-section (1) does not prescribe any conditions or limitations within which the said law is to operate. The law therefore can make any provision other than the one indicated in Section 109. AIR 1963 Mys 66 (71) = 1962 Mys LJ (Supp) 49.

(4) Muslim wakf in Kanyakumari district — District transferred from Travancore-Cochin to Madras State on reorganization of States in 1956 — Muslim Wakf Act coming into force in Madras in 1955 but the Wakf Board constituted in Madras in 1958 — No State Wakf Board functioning on 1-11-56 in the State of Travancore-Cochin — Hence Madras State Wakf Board can have jurisdiction over the Kanyakumari District and include the wakf in Public Wakf list. (1968) 2 Mad LJ 144 (150).

(5) Mutts and Temples in South Kanara District were within the jurisdiction of the Commissioner for Religious and Charitable endowments of Madras State when the district was in Madras State before reorganisation. After reorganisation the district went to Mysore State. Mysore State issued a notification under S. 122 of the S. R. Act and placed the temples under the Commissioner for Religious and Charitable Endowments for Mysore State — Madras Commissioner cannot exercise jurisdiction under S. 109 of the States Reorganisation Act over the temples in South Kanara. (1967) 12 Law Rep 195 (204) (Mys).

(2) Any directions issued by the Central Government under sub-section (1) in respect of any such body corporate shall include a direction that any law by which the said body corporate is governed shall in its application to that body corporate have effect subject to such exceptions and modifications as may be specified in the direction.

110. Temporary provisions as to the continuance of certain existing road transport permits.—(1) Notwithstanding anything contained in section 63 of the Motor Vehicles Act, 1939, a permit granted by the State or a Regional Transport Authority in an existing State, the whole or any part of the territories of which is transferred to another existing State or to a new State shall, if such permit was, immediately before the appointed day, valid and effective in any area in the territories so transferred, be deemed to continue to be valid and effective in that area after that day subject to the provisions of that Act as for the time being in force in that area; and it shall not be necessary for any such permit to be countersigned by any other State or Regional Transport Authority for the purpose of validating it for use in such transferred territories:

Provided that the Central Government may, after consultation with the State Government or Governments concerned, add to, amend or vary the conditions attached to the permit by the Authority by which the permit was granted.

(2) No tolls, entrance fees or other charges of a like nature shall be levied after the appointed day in respect of any transport vehicle for its operations in any transferred territory under any such permit, if such vehicle was, immediately before that day, exempt from the payment of any such toll, entrance fees or other charges for its operations beyond the boundaries of the State in which such permit was granted:

Provided that the Central Government may, after consultation with the State Government or Governments concerned, authorise the levy of any such toll, entrance fees or other charges, as the case may be.

111. Special provision relating to retrenchment compensation in certain cases.—Where, on account of the reorganization of the States under this Act, any body corporate constituted under a Central Act, State Act or Provincial Act, any co-operative society registered under any law relating to co-operative societies or any commercial or industrial undertaking of an existing State, is reconstituted or reorganised in any manner whatsoever or is amalgamated with any other body corporate or undertaking, or is dissolved, and in consequence of such reconstitution, reorganization, amalgamation or dissolution any workman employed by such body corporate or in any such undertaking is transferred to, or re-employed by, any other body corporate or undertaking, then, notwithstanding anything contained in section 25-F of the Industrial Disputes Act, 1947, such transfer or re-employment shall not entitle him to any compensation under that section:

Provided that—

(a) the terms and conditions of service applicable to the workman after such transfer or re-employment are not less favourable to the workman than those applicable to him immediately before the transfer or re-employment; and

(b) the employer, in relation to the body corporate or the undertaking where the workman is transferred or re-employed, is by agreement or otherwise legally liable to pay to the workman, in the event of his retrenchment, compensation under section 25-F of the Industrial Disputes Act, 1947, on the basis that his service has been continuous and has not been interrupted by the transfer or re-employment.

Section 110 — Note 1

(1) Inter-State routes between States of Madhya Pradesh and Bombay — Before reorganisation of States routes falling within State of old Madhya Pradesh — Permits granted by R. T. A. of old M. P. — Reciprocal agreement between Bombay and M. P. States after reorganisation of States — Routes allotted to new M. P. — Applications for renewal should be made to R. T. A., Madhya Pradesh. AIR 1962 Madh Pra 59 (61) (DB).

112. Provision as to the Devaswom Surplus Fund of Travancore.—(1) As from the appointed day, there shall be established in the State of Madras a Devaswom Fund for the management of Hindu temples and shrines in the territories transferred to that State from the State of Travancore-Cochin.

(2) The assets as on the appointed day of the Devaswom Surplus Fund constituted by section 26 of the Travancore-Cochin Hindu Religious Institutions Act, 1950, shall be divided into two parts in the ratio of 37.5 to 13.5 in such manner as the Central Government may, by order, direct, and the smaller part shall, as from the appointed day, be transferred to the Fund mentioned in sub-section (1).

113. Continuance of facilities in certain State institutions.—The Central Government may, in respect of the institutions of the categories specified in the Sixth Schedule located in a new State or in the State of Andhra Pradesh or Madras, direct that such facilities as may be specified in the direction shall be provided to the Government and the people of one or more adjoining States for such period as may be so specified; and thereupon those facilities shall be provided for the said period upon such terms and conditions as may be agreed upon between the State Government concerned before the 31st day of March, 1957, or, if no agreement is reached by the said date, as may be fixed by order of the Central Government.

OBJECTS AND REASONS

Section 113 and Schedule VI.—"Provision is made in this [section] for the continuance of facilities in certain classes of State Institutions, such as engineering colleges, medical colleges, Government hospitals, research institutions and central jails, which are now enjoyed by all areas within the existing State. In order that the transfer of territory from one State to another might not be allowed to cause serious dislocation, the Central Government is empowered to issue directions to the State Government concerned for the continuance of such facilities. Agreements will no doubt be reached between the State Governments as to the terms and conditions on which facilities in institutions located in transferred territories will be continued for the Government and the people of the adjoining States."—S.O.R.

PART X

PROVISIONS AS TO SERVICES

114. Provisions relating to All India Services.—(1) In this section, the expression "State cadre",—

(a) in relation to the Indian Administrative Service, has the meaning assigned to it in the Indian Administrative Service (Cadre) Rules, 1954; and

(b) in relation to the Indian Police Service, has the meaning assigned to it in the Indian Police Service (Cadre) Rules, 1954.

(2) As from the appointed day, there shall be constituted for each of the new States a State cadre of the Indian Administrative Service and State cadre of the Indian Police Service.

(3) The initial strength and composition of each of the said cadres shall be such as the Central Government may by order* determine before the appointed day.

(4) The cadres of each of the said services for the existing States of Bombay, Madhya Pradesh, Punjab and Vindhya Pradesh, and for the existing Part B States shall, as from the appointed day, cease to exist, and the members of each of the said services borne on those cadres shall be allocated to the State cadres of the same service for the new States or for the other existing States in such manner

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Section 113 — Note 1

(1) The policy underlying Section 113 of the Act and the various notifications issued thereunder by the concerned Government is to extend equal facilities and opportunities to students belonging to areas which once formed part of the Hyderabad State but were removed from the State and included in other States. This does not constitute discrimination against students of the Telangana area and does not amount to an infraction of guarantees contained in Article 14 of the Constitution. AIR 1959 Andh Pra 437 (441) = ILR (1959) Andh Pra 137 (DB).

and with effect from such date or dates as the Central Government may by order specify.

(5) Nothing in this section shall be deemed to affect the operation after the appointed day of the All-India Services Act, 1951, or the rules made thereunder in relation to the State cadres of the said services constituted under sub-section (2) and in relation to the members of those services borne on the said cadres.

[*] For the All-India Services (Reorganisation of Cadres) Order, 1956, see S.R.O. 2511, dated 27-10-1956, published in Gaz. of Ind., 1956, Pt. II, Sec. 3, Extra., page 2165.

115. Provisions relating to other services.—(1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.

(2) Every person who, immediately before the appointed day, is serving in connection with the affairs of an existing State part of whose territories is transferred to another State by the provisions of Part II shall, as from that day, provisionally continue to serve in connection with the affairs of the principal successor State to that existing State, unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of any other successor State.

(3) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person

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SECTION 115 — SYNOPSIS

1. Scope.
2. Sub-section (2).
3. Sub-section (3).
4. Inter-State Seniority Lists.
5. Sub-section (5) — General.
6. Division and integration — Sub-s. (5), Clause (a).
7. Fair & equitable treatment — Sub-s. (5), Clause (b).
8. Opportunity to make representation.
9. Conditions of service.
10. Sub-section (7).
11. Previous approval — Sub-s. (7) Proviso.

1. Scope.— (1) The Central Government under Section 115 is to determine the principles governing equation of posts and prepare a common gradation list by integration of services. It has to ensure fair and equitable treatment to all persons in the matter of integration of services and preparation of gradation lists after giving opportunities to the parties affected to make their representation. **1973 Lab IC 84 (86) = (1973) 1 SCWR 94.**

(1A) Equation of posts is a matter within the province of Central Government. It is not within province of Courts to lay down what are the principles to be adopted for purposes of equation. But if a particular decision is mala fide or arrived at on totally irrelevant and extraneous considerations, such a decision can be interfered with by courts. **AIR 1973 SC 2102 (2106) = (1973) 1 Serv LR 1007 (1013) (SC).**

(2) The result of integration of services under Section 115 is that officers belonging to different categories and coming from different integrated parts of new State when they were equated under one category, their original differences disappeared and after integration they belonged to one category only,, namely, category fixed by Central Government. State Government gets no right to put at naught integration made by Central Government even for promotion to higher grades on basis that originally officers belonged to different categories and exercised different powers or enjoyed different scales of pay. 1972 Lab IC 925 (927, 928) = 1972 MPLJ 627 (DB).

(3) There is nothing in Section 115 or Section 117 of the Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter affecting the integration of the services. So long as the act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter, it cannot be held that there has been any violation of the principle "delegatus non potest delegare." **AIR 1968 SC 850 (857) = (1968) 2 SCR 186 ** ILR (1970) 2 Punj 1 (19).**

(4) So long as Central Government had power to give directions to State Government for ensuring fair and equitable treatment to persons affected by provisions of Section 115 and for carrying out its decisions in respect of representations made to it by such persons, it could not said that process of integration is complete. **AIR 1965 Guj 23 (39) = ILR (1963) Guj 1204 (FB).**

(5) It is not correct to say that the word "integration" merely covers allotment. The

referred to in sub-section (2) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(4) Every person who is finally allotted under the provisions of sub-section (3) to a successor State shall, if he is not already serving therein be made available for serving in that successor State from such date as may be agreed upon between the Governments concerned, and in default of such agreement, as may be determined by the Central Government.

(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to—

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(6) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of Section 114, apply.

(7) Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

Section 115 — Note 1 (contd.)

determination of equivalence of posts, absorption in equivalent posts and appointment of persons to such posts would form part of integration and would be covered by the expression "integration". **AIR 1965 Guj 23 (38, 39) = ILR (1963) Guj 1204 (FB).**

(6) The power of the Central Government under Section 115 in respect of integration of services is confined to integrating services affected by the reorganisation of States. It can only deal with persons affected by Section 115 and not others. Where the lecturers of the colleges are taken over by State Government from the university they are not persons affected by Section 115. Hence Central Government has no power to deal with their cases. The power to integrate them rests with the State Government. (1964) 1 Mys LJ 382 (385) (DB).

(7) Allotment and intergration of service personnel — Power of Central Government not exhausted merely by laying down criteria for final allotment and intergration but continues till entire process of integration is completed. all problems, doubts resolved and all representations considered — If there is any misunderstanding or doubt regarding true implication of decision taken, Central Government on further representations from parties affected, has power to show true meaning of integration process. AIR 1968 Andh Pra 5 (13, 14) = (1967) 1 Andh WR 102 = 1968 Lab IC 12 (DB).

(8) Under Sections 115 and 116 the Central Government is not charged with any duty to decide lis inter partes or to determine any fact judicially. The Central Government is required only to make adjustments in view of the formation of the new State and to determine the successor State to which persons serving in the merged State shall be allotted for service. AIR 1967 Punj 98 (102, 103) = 1965 Punj LR (Supp) 477.

(9) In exercising powers under Sections 115 and 116 the Central Government is not acting judicially. The Act confers no right on an employee to say that his right to be appointed should be determined by application of certain set principles and he should be placed in category in which some others are placed. AIR 1967 Punj 98 (102, 103) = 1965 Punj LR (Supp) 477.

(10) Central Government has power to review its own earlier decision. **1973 Lab IC 84 (86) = (1973) 1 SCWR 94.**

(11) Protection under — Temporary posts abolished in pursuance of general Governmental policy — No question of altering conditions of service involved — No violation of protection given by section. AIR 1968 Andh Pra 307 (309) = 1968 Lab IC 1293.

(12) Official memorandum No. C. H. S. 2022-33/ Miscellaneous 97-57-6 dated 9-2-1956 — Scope — Has not the status of direction under Section 117 — Persons promoted to particular posts by State Governments before date of integration could claim benefit of Section 116. AIR 1963 Mys 219 (225) = 1963 Mys LJ (Supp) 302 (DB).

(13) Servant of erstwhile Hyderabad State alloted to Mysore State on reorganisation. Even after allotment, his conditions of service remained unaltered, in view of Section 115 — Option to be governed by new Rules not exercised — Compulsory retirement — Rule 293, Hyderabad C. S. Rules and not Rule 285, Mysore C. S. Rules, applies — — Order passed under Rule 293 H. C. S. Rules not invalid. AIR 1966 Mys 61 (64. 65) = (1965) 1 Law Rep 293 (DB).

Section 115 — Note 1 (contd.)

(14) State Government has power to integrate its own-services subject to powers of Central Government under Section 115 (5) and Section 117 — Bombay Government Order, dated 1-4-1960 — Validity — Order passed by the State Government in compliance with the directions of the Central Government cannot be assailed with any success. **AIR 1965 Guj 23 (36, 37, 39 to 41) = ILR (1963) Guj 1204 (FB).**

2. **Sub-section (2).**— (1) Section 115 (2) confers power on the Central Government to make provisional and then final allotments and until the Central Government passes its orders the employees of an existing State a part of which is transferred to another State have to continue to serve the principal successor State. The existing State cannot revert such employees going to the new successor State on the ground that they would not be required by the new State. **AIR 1972 SC 2170 (2171) = 1972 Lab IC 1280 = (1972) 2 SCWR 343.**

(2) Where immediately before the appointed day a person was serving in connection with the affairs of an existing State he under Section 115 (2), from appointed day, provisionally continues to serve in connection with the affairs of the principal successor State to that existing State. AIR 1957 Mad 769 (771) = ILR (1957) Mad 1010 (DB).

(3) Section 116 which is complementary to Section 115 (2) merely substitutes the successor State as the appointing authority in the place of the parent State. AIR 1971 Mys 53 (59) = (1970) 2 Mys LJ 187 = 1971 Lab IC 176 (DB).

(4) Under Section 116 (2) State Government is empowered to pass in relation to any allocated servant, any order affecting his continuance in any post or office previously held by him — Provisional arrangement may prejudice public servant — But that is only a temporary disadvantage which is expected to be corrected at time of final arrangement. AIR 1970 Madh Pra 132 (153) = 1969 MPLJ 751 (DB).

(5) Petitioner working as accountant in former State of Madhya Bharat but his substantive rank was of Upper Division Clerk. Allocation of petitioner to Madhya Pradesh and was absorbed as accountant from 1-11-1956 — **Held** as his substantive post was of Upper Division Clerk in M. B. he could be absorbed in Madhya Pradesh only in the corresponding post of Upper Division Clerk. His absorption as accountant was not in accordance with the provisions of Section 115. 1971 Jab LJ 810 (811).

(6) Continuation of service of temporary teacher of a former State, even after the merger of that State with another State service terminable by one month's notice on either side — Rule 8 of Punjab Educational Service, Class III, School Cadre Rules of 1955 not applicable to it. Previous condition of service continues and his service can be terminated with one month's notice. (1967) 69 Pun LR 50 (53).

(7) Civil servant has right after allotment to hold post in new State corresponding to his post in parent State — Purpose in entrusting allotment to Central Govt. under Section 115 (2) — Employees could secure fair and even-handed treatment. AIR 1967 Mys 225 (229, 230) = (1966) 8 Law Rep 448 (DB).

3. **Sub-section (3).**— (1) Government officer working in area that was part of State of Rajasthan began to work in State of Madhya Pradesh during reorganisation of States — Delay in passing order under Section 115 (3) — He would be deemed to be a servant of the State of Madhya Pradesh with effect from 1st November, 1956. notwithstanding the delay in the making of the order under Section 115 (3) by the Union Government. AIR 1963 Madh Pra 216 (217) = 1963 Jab LJ 98 (DB).

4. **Inter-State seniority Lists.**— (1) Once the provisional Inter-State seniority list is prepared and published as a basis for integration that becomes current list until a final list is published and everything that happens in the interim is only a step or stage in the process of integration which has no independent legal existence. Promotions made on the basis of provisional list as interim stage held could not be sustained when challenged in writ petitions. 1971 Lab IC 1060 (1064) = (1971) 1 Mys LJ 180.

(2) Once provisional seniority list of employees is prepared, whole State must be treated as one unit and promotions made strictly according to the list. Promotions made on the basis of regional list violate Article 16. AIR 1971 Andh Pra 320 (329, 330) = 1971 Lab IC 1191 (DB).

(3) Until a final inter-State seniority list is prepared promotions should be governed by the provisional inter-State seniority list — Everything that happens in the interim is only a step or stage in process of integration which has no independent legal existence or enforceability. 1971 Lab IC 1060 (1064) = (1971) 1 Mys LJ 180 (DB).

(4) After the provisional list is submitted the parties have a right of making representations. (1971) 2 Mys LJ 437 (440).

(5) The integrating authority as well as the Central Government becomes functus officio on publication of the final inter-State seniority list. Thereafter it can reconsider equations only in accordance with the order, if one is made, by a competent court with reference to the final list. (1971) 2 Mys LJ 539 (549).

(6) When a final list of inter-State seniority is quashed by the High Court whether in part or in full the provisional inter-State seniority list does not get revised for the administration of the day to day administration of the State. But the quashed list should be regarded as available to the State Government as a basis far carrying out its day to day administration. (1970) 2 Mys LJ 407 (409).

(7) Joint Seniority List as result of integration — Illegality in — Representation against this illegality accepted by Central Government — Necessary direction made in that behalf — Revised list not corrected — Petitioner's name directed to be kept in proper place. AIR 1969 Punj 34 (43) = ILR (1968) 1 Punj 204.

Section 115 — Note 4 (contd.)

(8) Preparation of inter-State seniority list — Criteria for equation of posts laid down in conference of Chief Secretaries of States 1956 — Court can consider whether those criteria have been followed while preparing final inter-State Seniority list. AIR 1969 Mys 362 (365 to 367) = 1969 Lab IC 1492 = 19 Law Rep 71 (DB). (AIR 1969 Punj 34, held not good law in view of AIR 1968 SC 850.)

(9) A, one Asst. Master in High School, appointed to post of Special Officer Hindi by process of selection — Review of promotions made irregularly on basis of provisional inter-State Seniority list as superseded by final inter-State seniority List — Reversion of A from Class II to Class III post is illegal. AIR 1969 Mys 306 (308) = 1969 Lab IC 1219 = (1969) 1 Mys LJ 169 (DB).

(10) Service under former Pepsu State — Merger of State with Punjab — Provisional joint seniority list in Education Department prepared — Final gradation list of Education Department made with retrospective effect — Petitioner getting seniority with retrospective effect by virtue of such final gradation list cannot be given the promotion later than a person senior to him in the provisional gradation list but junior to him in the final gradation list — Fact that such incumbent had passed the test earlier before framing of final gradation list is no ground to grant him promotion earlier. 1967 Cur LJ 504 (505, 506) (Punj).

5. Sub-section (5) — General.— (1) Sections 115 (5) and 117 do not prohibit Central Government from taking assistance of State Government in matter of integration of services. **AIR 1968 SC 850 (856, 857) = (1968) 2 SCR 186.** (AIR 1964 Madh Pra 307 **Reversed.)** ** AIR 1970 Madh Pra 132 (142, 147. 148) = 1969 MPLJ 751 (DB).

(1A) High Court cannot go into the merits or otherwise of Central Government's Order as to equalisation of posts. **AIR 1973 SC 2102 (2107).**

(2) Central Government under Section 115 (5) does not confer any new rights but only determines rights existing as on midnight of 30-10-1956/1-11-1956. If successor State under Article 162 of Constitution regularises service with retrospective effect from a date anterior to 1-11-1956, it confers for first time right of seniority which pertains only to regular service and thereby enables that candidate to occupy a place in inter-State seniority list which he could not have had but for regularisation. This amounts to interference with Central Government's exclusive power under Section 115 and hence is not permissible. AIR 1971 Mys 53 (59) = 1971 Lab IC 176 = (1970) 2 Mys LJ 187 (DB).

(3) Section 115 (5) when it empowered the Central Government to appoint advisory committees to assist it in regard to a fair and equitable integration of the services, on a proper consideration of representation made by their personnel, what it did was to appoint it as the authority to make the integration. AIR 1961 Mys 210 (215) = 39 Mys LJ 425 (DB).

(4) By virtue of Article 4 (2) of the Constitution, the Act containing Section 115 (5) is not open to the criticism that it contravenes the Constitution. AIR 1961 Mys 210 (218) = 39 Mys LJ 425.

(5) The final authority in the matter of integration being the Central Government, the State Government cannot be permitted to do anything contrary to such specific orders or to the general scheme of integration framed by the Central Government. Such action of the State Government would be in excess of its powers. 1973 Lab IC 1166 = 1972 MPWR 566 (572).

(6) Section 115 (5) would be fully satisfied if power of State Government conferred under Article 162 of the Constitution is made subject to any directions which Central Government may give to State Government in connection with integration of services. To the extent that Central Government chooses to exercise that power, power of State Government would be circumscribed or limited. **AIR 1965 Guj 23 (37) = ILR (1963) Guj 1204 (FB). (AIR 1961 Mys 210 Dissented from.)**

(7) Inter-State Seniority list — Only regular service can be taken into account. AIR 1971 Mys 53 (57, 58) = 1971 Lab IC 176 = (1970) 2 Mys LJ 187 (DB).

(8) Central Government by a notification under Section 115 (5) fixing seniority of officers in the Mysore State. The State Government is bound to give effect to it. **(1970) 2 SCWR 426 (427).**

(9) Matters relating to integration of services resulting from State reorganisation — Central Government is final authority. **AIR 1970 Ker 165 (167) = ILR (1969) 2 Ker 391 = 1970 Lab IC 967 (FB)** ** ILR (1970) Andh Pra 335 (398). (Decisions and directions of the Central Government must be complied with by the State Governments.)

(10) As the State has no power to allot to itself public servants of other States, that power is conferred on the Central Government by the Parliament. ILR (1970) Andh Pra 335 (398).

(11) Under Section 115 (5) the Central Government is the sole repository of the power to effectuate the integration of services in the new States and the States of Andhra Pradesh and Madras. It cannot be contended that the Government of a recognised State alone has exclusive power to effectuate the integration of its services. AIR 1970 Madh Pra 132 (142, 147, 148) = 1969 MPLJ 751 (DB). (AIR 1969 Punj 34. AIR 1963 Guj 23 (FB). **Dissented from.)**

(12) The authority of the Central Government in respect of the integration of State services on its reorganization under Section 115 (5) is the original authority and the State Government is not competent to determine finally the integration of services and to prepare and publish a 'Final Inter-State Seniority List'. The State Government can only forward a provisional inter-State seniority list to the Central Government for its decision in consultation with the Advisory Committee and for publication of the final inter-State seniority list. Along with this it can also forward the objections or representations of the several Government ser-

Section 115 — Note 5 (contd.)

vants. AIR 1966 Mys 31 (33 to 35) = (1965) 1 Mys LJ 392.

(13) Section 115 (5) transmitted the power to integrate State service exclusively to the Central Government. The authority conferred on the Central Government by Sec. 115 (5) is not in the nature of appellate power. It is plain original authority. AIR 1961 Mys 210 (215, 216) = 39 Mys LJ 425 (DB).

(14) Integration of services under — Powers of Central Government are quasi judicial — Speaking orders must be passed and reasonable opportunity be given to employee. AIR 1970 Madh Pra 132 (150 to 153) = 1969 MPLJ 751 (DB).

(15) Power to integrate State Services — Power exclusively belongs to Central Government — Under Section 115 (5) Central Government is required to act judicially — Power is open to judicial review. (1965) 2 Law Rep 385 (397) (DB) (Mys).

(16) Servants of High Court of existing State allotted to service of High Court of new State — Registrar of the High Court is bound to submit all papers and representations by the affected persons to Central Government for decision — Power given to Central Government under Section 115, of the Act, is a special power which overrides the power given to Chief Justice under Art. 229. AIR 1966 Mys 81 (84) = (1965) 2 Mys LJ 54 (DB).

(17) Under Section 115 the Central Government has power to allot personnel to deal with division and integration of the services among the new States. to ensure fair and equitable treatment to all persons affected by provisions of S. 115 and proper consideration of any representation made by such persons. The appointment of Advisory Committee does not mean that these powers cannot be exercised by Central Government. ILR (1970) Andh Pra 335 (389).

(18) Where an Advisory Committee has been constituted the statutory requirement is that its assistance should also extend to the consideration of representations. (1969) 1 Mys LJ 440.

(19) Functions of Advisory Committee — Question of constitutionality of order passed by erstwhile Pepsu State in July, 1956, affecting seniority of government servant cannot be looked into by Advisory Committee. Its function is limited to seeing that the integration of the services took place according to statutory provisions and rules. 1966 Cur LJ 678 (684) (DB).

(20) The principles laid down in the conference of Chief Secretaries held in May 1956 are not inflexible and the Government of India can take into consideration any situation that may be brought before it which requires it to vary those principles or give a different decision as applicable to a particular set of facts having regard to the circumstances governing them. The Central Government has thus a power to review its earlier decisions having regard to the representations from different persons. ILR (1970) Andh Pra 335 (387, 402).

(21) A person serving as Deputy Commercial Tax Officer in Madras State must be treated as having made his entry into Kerala service as such though in view of an illegal out-of-turn reversion made against his anticipated allotment to the Kerala State he was actually holding the post of Assistant Commercial Tax Officer on the appointed day. 1971 Lab IC 623 (625) = (1971) 1 Lab LJ 334 (DB) (Ker).

6. Division and integration — Sub-section (5) Cl. (a).— (1) The words "division and integration" have nothing to do with allotment. Allotment of officials is to assign the official serving in one State which was an existing State on the appointed day to serve another State which is formed due to reorganisation of States. Sub-section (5) comes into operation only after allotment is made by Central Government. ILR (1970) Andh Pra 335 (391).

(2) Regularisation of Service by executive order under Article 162 should not be from any date prior to 1-11-1956 in the case of allottees under the Act as it would interfere with Central Government's power of integration under Section 115 (5). AIR 1971 Mys 240 (241) = (1971) 1 Mys LJ 213 (DB).

(3) Formation of new State of Madhya Pradesh — Final gradation list prepared by Central Government relates back to 1-11-1956 — Absorption of certain persons by State Government in 1959 and promotion of persons so absorbed in 1965 and 1966 — State Government had, under Articles 162 and 246 (3) read with Entry 41 of List II, full power to deal with its services. AIR 1970 Madh Pra 189 (190) = 1970 MPLJ 168 (DB).

(4) The word 'among' read with the word 'integration' in the context means among the services of each of the States. The word 'among' means mingling between the services and the word integration cannot be given a different meaning confining it to allotment. ILR (1970) Andh Pra 335 (393).

(5) Integration of Magistrates with civil judiciary — Creation of separate cadre and separate rules for them — No violation of principles of integration of services. **AIR 1970 Ker 165 (178 to 180) = 1970 Lab IC 967 = ILR (1969) 2 Ker 391 (FB).**

(6) Appointment of official by transfer from one Department to another is no part of integration — Transfer is not dependent on completion of integration by Central Government. AIR 1968 Mys 73 (80, 81) = (1968) 2 Mys LJ 299 (DB).

(7) When officials of the reorganised State are transferred after 1-11-1956 from one Department to another in the State, the transfer is not made by the Central Government but by the reorganised State Government and such transferred officials are not officials, affected by the provisions of Section 115. Their initial seniority, i. e., seniority at the commencement of service in the reorganised State as on 1-11-1956 alone forms part of the process of integration of services under Section 115 (5). AIR 1968 Mys 73 (78) = (1968) 2 Mys LJ 299 (DB).

(8) Integration of services among the new States — Power to prepare inter-State seniority List of new State Government servants — Such list is to be prepared only by Central Government and not by State Government — State Government can prepare a provisional list — It can also equate one or more posts in State's services. AIR 1966 Mys 95 (97 to 99) = (1965) 2 Mys LJ 200 (DB).

Section 115 — Note 6 (contd.)

(9) Merger of States of Punjab and Pepsu into State of Punjab — Publication of final seniority list of Secretariat Assistants to Superintendent group — State Government creating new scheme of Assistant Section Officers and ignoring case of senior person who was also qualified under Rule 8 (1) (a) (i) promoting others on the basis of new scheme — State Government also not reviewing promotion in accordance with directive issued by Central Government — Promotions held invalid — Scheme with regard to Section Officer could not operate so as to defeat the directive of Central Government. 1969 Lab IC 909 (912, 913) = 1969 SLR 423 (Punj) (DB).

(10) Where the Government had expressly made promotions of certain tahsildars to Deputy Collectors temporary without prejudice to claims of others for regular promotions and the Tahsildars understood the promotions to be temporary, it was held that they are not entitled to claim posts of Dy. Collectors permanently in supersession of claims of others. AIR 1968 Andh Pra 364 (369, 370) = 1968 Lab IC 1499 = (1969) 1 Andh WR 17.

(11) The State Government finding integration of personnel of Clerks from Malabar with personnel from Travancore-Cochin together impossible — Separate integration made — Petition for writ of mandamus against Kerala State for integration — **Held** the word 'may' in sub-section (5) cannot be construed as 'must' — Integration of services is not always an unmixed advantage. Integration of services in all cases is not mandatory in case of State Governments — That duty is cast on Central Government — No mandamus against Kerala State can issue. 1967 Ker LJ 315 (317).

(12) Employees of Bombay State Road Transport Corporation allotted to Mysore State under Section 10 (1) of Road Transport Corporation Order — Employees are civil servants of Mysore State — Orders passed by erstwhile employee of Bombay State R. T. C. as Deputy General Manager of Mysore Govt.. Road Transport Department in disciplinary proceedings against employees of department cannot be called in question on basis of personal status of that officer if they are otherwise valid. AIR 1963 Mys 66 (73) = 1962 Mys LJ (Sup) 49 (DB).

(13) Allotment and reversion of civil servant not according to scheme of Act — Central Government need not make new allotment of the civil servant, since such fresh allotment is superfluous and unnecessary under Section 116. AIR 1967 Mys 225 (231) = (1966) 8 Law Rep 448 (DB).

(14) Central Government having no knowledge of reversion of civil servants making comprehensive allotment of all civil servants and not any individual allotment — **Held** question whether allotment made by Central Government was for any reason unsupportable did not arise. AIR 1967 Mys 225 (230) = (1966) 8 Law Rep 448 (DB).

(15) Integration of personnel — Personnel hearing by Central Government — Not a procedural essentiality because statute does not cast any such duty — Central Government taking decision in consultation with Central Advisory Committee, State Government and considering all the representations received from time to time — **Held** procedure adopted through it did not provide for personal hearing or calling of counter representations was adequate because it was not possible to give personal hearing to vast number of officials involved in process of division and integration. AIR 1968 Andh Pra 5 (15, 16) = (1967) 1 Andh WR 102 = 1968 Lab IC 12 (DB).

(16) Officers of erstwhile Hyderabad State, though not integrated with District Health Officers of Andhra Pradesh were considered eligible for promotion as Assistant Director of Public Health and were allowed to count their continuous service in Health Wing of Hyderabad for promotion and seniority while officers in Andhra Pradesh were to count their service in Health Department only and not the continued service in Health and Medical Department — Principle held not violative of Article 16 of the Constitution. AIR 1968 Andh Pra 5 (16, 17) = (1967) 1 Andh WR 102 = 1968 Lab IC 12 (DB).

7. Fair and equitable treatment — Sub-section (5), Clause (b).— (1) Only when the interests of all persons affected by the reorganisation belonging to the different areas are considered on certain general principles can it be said that fair and equitable treatment is given to them. ILR (1970) Andh Pra 335 (410).

(2) The principles of comparing the services of the persons in respective areas on the basis of qualification, pay, similar nature of duties and continuous officiation of service for equation of posts and fixation of inter se seniority appear to be the proper criteria for determining what is fair and equitable treatment of all persons affected. ILR (1970) Andh Pra 335 (409).

(3) Equation of posts has to be made by the application of the four principles evolved at a meeting of the Chief Secretaries and communicated to all State Governments. These principles have acquired statutory force as they have been held to amount to instructions issued by the Central Government. All these four principles have to be borne in mind and applied to the case before equation is done. It is erroneous to apply one principle in isolation. (1970) 2 Mys LJ 184 (186) (DB).

(4) The existence of equivalence between the two posts does not depend upon the source of power in the exercise of which they are made — Though salary post is one of criteria by application of which equivalence can be deduced, it has to be considered in conjunction with nature and duties of post, responsibilities and powers exercised by officer holding post including extent of area and charge held and minimum qualifications, if any, prescribed for recruitment — Fact that two posts do not belong to same cadre and that source of power to their recruitment is different is irrelevant. (1970) 1 Mys LJ 222.

(5) If the posts are otherwise equivalent, the mere fact that one post carries a higher pay scale because the State creating it could afford it while the other State does not afford to pay such pay scale the variation in the pay scales cannot itself be the determining factor. (1969) 1 Mys LJ 440.

Section 115 — Note 7 (contd.)

(6) The power of the Central Government to ensure fair and equitable treatment or making representation under Section 115 (5) (b) is not limited in its scope to the matter of integration only but extends to other matters also, such as allocation to a particular State. (1967) 2 Mys LJ 544 (564).

(7) Integration of employees — Inter se seniority of employees allotted from other State cannot be disturbed. **AIR 1970 Ker 165 (169) = ILR (1969) 2 Ker 391 = 1970 Lab IC 967 (FB).**

(8) Public servant holding officiating post on promotion and also substantive lien of post of lower grade — Inclusion of his name in seniority lists of both grades is necessary. **AIR 1970 Ker 165 (175) = ILR (1969) 2 Ker 391 = 1970 Lab IC 967 (FB).**

(9) Integration of services after State reorganisation — Equation of posts of Munsifs of Madras State with those of Travancore Cochin State — Adoption of principle of functional parity with reference to nature, powers and responsibilities of posts — No contravention of Section 115 (5). **AIR 1970 Ker 165 (175, 176) = ILR (1969) 2 Ker 391 = 1970 Lab IC 967 (FB).**

(10) At the preliminary or provisional stage High Court will never interfere with provisional equation. At final stage, all that the High Court can examine is whether integrating Authority has applied its mind to the necessity of applying principles laid down for purposes of equations and acted upon those principles. If integrating Authority had in fact applied its mind and came to a conclusion on question of equation, High Court cannot interfere with that equation. 1972 Lab IC 465 (468, 469) = (1971) 2 Mys LJ 396 (DB).

(10A) Equation of posts by Central Government — High Court has no power to go into the merits or otherwise of such equation. **AIR 1973 SC 2102 (2107).**

(11) The scope of judicial review in writ petitions challenging equation of posts made under Section 115 is to see whether the Central Government has borne in mind the four principles stated for arriving at the equations, whether all of them have been applied or the equation was done by applying only one or some of them and whether extraneous or irrelevant considerations have been taken into account. (1971) 2 Mys LJ 539 (546).

(12) Equation of posts is purely administrative function — Decision thereon by Central Government — Not amenable to writ jurisdiction. AIR 1970 Madh Pra 82 (85, 86) = 1969 MPLJ 657 (DB).

(13) Where promotees in merged territory before reorganisation were reverted after reorganisation to accommodate persons undergoing training for the promotion post, the promotees were entitled to seniority over subsequent appointees when their reversion was condoned and their seniority was fixed under Section 115 (5) as on the date of reorganisation. AIR 1971 Punj 348 (350) = 1971 Cur LJ 310.

(14) A final gradation list prepared by or with the sanction of, the Central Government is the foundation of a right of representation under Clause (b) of Section 115 (5) of the Act — Refusal of the State Government to give information to a civil servant aggrieved by the provisional gradation list is denial of a reasonable opportunity to him to make a representation against the provisional gradation list — This by itself without more vitiates the order of the Central Government rejecting his representation as also the final gradation list subsequently published by the State Government. AIR 1970 Madh Pra 132 (149, 150) = (1969) MPLJ 751 (DB).

(15) Reorganisation of States — Madras and Travancore Cochin audit clerks allotted to Kerala Service — Promotion tests for Cochin clerks (who were Juniors) held earlier than for the former — Cochin clerks passing test earlier held could not supersede Madras clerks passing in test held subsequently. (1970) 2 Lab LJ 674 (678) (Ker) (DB).

(16) No question of reduction in rank arises when equation of posts has been validly made by the integrating authority. (1971) 2 Mys LJ 539 (Pr 29).

(17) Government taking over management of private Trust fund and treating its employees as Government servants — Services rendered by them in Trust fund are to be treated as part of services rendered under Government. AIR 1969 Mys 346 (347, 348) = (1968) 1 Mys LJ 415 = 1969 Lab IC 1357. (DB).

(18) Where the Government stipulates certain conditions for absorption of officials in Secretariat service, mere continuance of an official in that service cannot impute to him consent to those conditions nor can it lead to the inference that the Government had waived the requirement of the official's assent to those conditions. 1971 Lab IC 1294 (1297) = (1971) 1 Mys LJ 555 (DB).

(19) In integration list District Welfare Organiser's post in V.-P. equated with post of Circle Organiser in M. P. — Petitioner's posting as Circle Organiser in M. P., held did not amount to reduction in rank so as to attract Article 311 (2) and it was also not by way of punishment. AIR 1966 Madh Pra 134 (135, 136) = 1965 MPLJ 825 (DB).

(20) Allotment of physical instructors from five regions to new State of Mysore on reorganisation — Assignment of higher pay scale for allottees from one State and lower pay scale for allottees from another held discriminatory and unjustified. AIR 1969 Mys 348 (349) = 1969 Lab IC 1466 = 1969 Serv LR 481 (DB).

(21) Principles regarding equation of posts as determined at conference of Chief Secretaries in 1956 — Allegation of violation of above principles — High Court cannot interfere with decision of Government in that behalf. AIR 1969 Punj 34 (43) = ILR (1968) 1 Punj 204.

8. Opportunity to make representation.— (1) Right of a civil servant to make representation to Central Government — Not exhausted by making one representation. AIR 1970 Madh Pra 132 (148) = 1969 MPLJ 751 (DB).

(2) The Central Government is to determine the principles governing equation of posts and prepare common gradation lists by integration of services. It has to ensure fair and equitable treatment to all persons in the matter of integration of services and

Section 115 — Note 8 (contd.)
preparation of gradation lists after giving opportunities to parties affected to make their representations. **1973 Lab IC 84 (86) = (1973) 1 SCWR 94.**

(3) Power to revise seniority list — Order fixing seniority list of integrated services is an administrative order and not a quasi-judicial one — Order could be revised on representations made by affected officials. 1972 Lab IC 266 (270) = 73 Punj LR 899.

(4) Under the Section all persons affected by the States Reorganisation have a clear right to make representation with respect to the integration to be made by the Central Government and the right cannot be restricted only to those who are 'dissatisfied' or 'aggrieved' by the preparation of provisional list. (1969) 1 Mys LJ 440.

(5) The word "any" occurring in subsection (5) (b) only means that, if the persons affected who had a right to make representations make them, there should be a proper consideration of the representations so made. Whether in addition to the one opportunity which is mandatory at the stage when the provisional list comes before the Central Government there should be yet another, must depend upon the facts and circumstances of each case, and that the claim to that second opportunity is not restricted to a case where there has been an application of a fresh or new principle in place of the criterion on which the provisional list rested. (1969) 17 Law Rep 739 (752) (Mys).

(5A) Order of equation of posts without giving an opportunity of making representation by concerned officers — Central Govt. furnishing opportunity before passing consequential orders — **Held** infirmity has been removed by Central Government. **AIR 1973 SC 2102 (2109) = (1973) 1 Serv LR 1007.**

(6) Final allotment of a civil servant to a particular State by Central Government under Section 115 (3) — Civil servant affected is entitled to make representations against his allotment. AIR 1962 Mys 112 (115) = 40 Mys LJ 62 (DB).

(7) Section 115 empowers the Central Government to divide the services in the present State and integrate services in the new State. That has nothing to do with the State Governments. Any representation called for in respect of steps taken by the State Government is not a representation contemplated by Section 115 (5). (1965) 2 Law Rep 385 (399) (Mys).

(8) Provisional inter-State seniority list by State — List prepared by considering all relevant factors — State publishing revised list and refixing particular servant's seniority — Representation of all affected servants not considered — Such revision is whimsical and arbitrary and violates Article 14 of the Constitution. AIR 1966 Mys 31 (33 to 35) = (1965) 1 Mys LJ 392 (DB).

(9) Provisional inter-State seniority list by departmental committee of State Government constitutes no more than mere material on which Central Government may make its final determination — Non-compliance with directions issued by Central Government under Section 117 — Aggrieved party can make representations against it to Central Government — Refusal by State Government to forward representations — Mandamus need not be issued at that stage — The High Court would not also direct the State Government to stop all promotions in the State until the final integration is made by the Central Government. AIR 1962 Mys 112 (114, 116, 117) = 40 Mys LJ 62.

(10) By virtue of Section 115 (1), even the officials who were working in the Districts of the former Mysore State stand allotted from the appointed day to the successor State in connection with the affairs of such State and can make a representation under Section 115 which may not only be against the equations made but also against the division and integration of services. (1966) 7 Law Rep 673 (677) (DB) (Mys).

(11) It is not necessary for the validity of Inter-State seniority list that the parties affected should have been given a hearing by the integrating authority, the Central Government. (1971) 2 Mys LJ 539 (546).

(12) Variation in conditions of service — Variation prejudicial to petitioners — Government must afford opportunity to petitioners before variation. 1971 Lab IC 118 (120) = 1970 Ker LT 1027.

(13) Joint seniority integrated service — Decision of Central Government in respect of — Opportunity of hearing must be given to person likely to be affected by it. 1967 Cur LJ 62 (64, 65) (Punj).

(14) Proceedings under — Persons making detailed representations — They are not as of right entitled to be heard orally — Central Government is not expected to act judicially. AIR 1969 Punj 34 (43) = ILR (1968) 1 Punj 204.

9. Conditions of service.— (1) The expression "conditions of service" does not include within its purview "chances of promotion" **1973 Lab IC 139 (167) (AP) (FB)** ** 1972 Lab IC 105 (106, 107) (Mys) (DB).

(2) The expression "conditions of service" would, in the absence of any definite indication to the contrary, include rules relating to salary or time scales of pay or grades, to contributory or other compulsory provident fund, to dearness allowance, to suspension and suspension allowance to termination of service to eligibility and qualifications for promotion and the like. AIR 1968 Punj 499 (505) = ILR (1969) 1 Punj 23 (DB).

(3) Words "conditions of service" in Section 115 (7) can only have the meaning which is attributable to those words in Article 309 of the Constitution. The question relating to equation of posts and the absorption of persons in certain posts and the appointment of persons to such posts cannot be regarded as falling within those words. **AIR 1965 Guj 23 (40, 41) = ILR (1963) Guj 1204 (FB).** (Continuance of persons allotted in the same posts which they occupied prior to their allotment is not guaranteed by Bombay Reorganisation Act, 1960.)

(4) Conditions regulating appointment, salary and pension are conditions of service. ILR (1969) Andh Pra 1152 (1185).

(5) The question relating to equation of posts and absorption of persons in certain posts and appointment of persons to such posts cannot be regarded as falling within words "conditions of service". AIR 1967 Punj 98 (102, 103) = 1965 Punj LR (Supp) 477 **

Section 115 — Note 9 (contd.)
1968 Iab IC 264 (267) = (1967) 1 Lab LJ 210 (Guj) (DB).

(6) Benefit of a procedure prescribed for disciplinary enquiries does constitute a condition of service. (1971) 1 Mys LJ 242 (243) = 1971 Lab IC 1225 (DB).

(7) Any rule which affects the promotion of a person relates to his conditions of service and unless there be the approval of the Central Government in terms of the proviso to sub-section (7) a rule which lays down the passing of certain departmental examination as a condition for promotion to a person who was an allottee to the new Mysore State would be a violation of sub-section (7). **1970 Serv LR 768 (775) (SC).**

(8) "Conditions of service" — **Held** the expression could not cover alleged practice of teachers acquiring degree of bachelor of teaching or equivalent becoming entitled to the scale of post of Master from the day they passed that degree examination. 1973 Lab IC 40 (41, 42) = 1972 Serv LR 402 (Punj) (DB).

(9) Practice that every teacher on passing B. T. examination was promoted to rank of teacher in higher scale of pay prevalent in erstwhile Pepsu State was held not a condition of service which could not be altered without the prior approval of Central Government. 1972 Serv LR 809 (811) (Punj) ** 1970 Cur LJ 811 (812) (Punj).

(10) Reduction of pay amounts to alteration of conditions of service and cannot be done without the previous approval of the Central Government. 1962 Mys LJ (Supp) 334 (336) (DB).

10. Sub-section (7).— (1A) There being no Article in C. C. S. Regulations providing for compulsory retirement of police personnel other than I. P. S. officers and Dy. S. P. S. such retirement of the officer amounts to varying condition of his service to his disadvantage within S. 115 (7). **AIR 1973 SC 2121 (2124) = 1973 SCD 632.**

(1) Government is not competent to alter by means of administrative instructions the conditions of service prescribed by rules made under Art. 309 of the Constitution. Further if approval of Central Government is not obtained for issuing those instructions relating to conditions of service the instructions would be invalid as violative of Section 115 (7). **AIR 1972 SC 1546 (1547) = (1972) 1 SCWR 874 = 1972 Lab IC 824.**

(2) The protection under sub-section (7) that the conditions of service of the employee cannot be changed to his disadvantage without the previous approval of the Central Government cannot be removed by the rules made by the State subsequent to 1-11-11956 unless the previous approval of the Central Government was obtained thereto. **AIR 1971 SC 117 (121) = (1970) 3 SCR 515.**

(3) A convention of the Education Department that on obtaining specified higher educational qualifications, the teachers would be promoted to a special higher scale of Masters is not a condition of service — Same not having been followed strictly and faithfully for two years prior to the integration, it was not protected by sub-section (7) of Section 115. 1972 Serv LR 809 (812) (Punj).

(4) Excluding only the power of integration which is specially taken out from the executive power of the State and conferred upon the Central Government by the Act, the rest of the executive power of the State under Article 162 of the Constitution remains with the State and it is part of that power to create new posts and abolish new posts. (1970) 2 Mys LJ 519 (522).

(5) Power of integration does not belong exclusively to States — Central Government has certain controlling, supervisory. concurrent and overriding powers — State Government's powers under Entry 41 of List 2 have to be exercised in subordination to those of Central Government. **AIR 1970 Ker 110 (115, 116, 118) = 1970 Ker LT 60 (FB).**

(6) The object of sub-section (7) of Section 115 is that just because Parliament has authorised Central Government to deal with certain matters concerning services, it does not mean that such power is to go on for ever overriding power under Article 309, Constitution. **AIR 1965 Punj 444 (447 to 450) = 67 Punj LR 715 (FB).** (Integration of servants of High Court on merger of Punjab and Pepsu States — Chief Justice of Punjab High Court and not the Central Government is the final authority.)

(7) Rule 4 (3) and (4) of A. P. State Judicial Service 1962 which alters conditions of promotion of protected employees is invalid for having been introduced without obtaining prior permission from Government of India under Section 115 (7), States Reorganisation Act. AIR 1971 Andh Pra 320 (328) = 1971 Lab IC 1191 (DB).

(8) Rule 161 (C-1) of Bombay Civil Service Rules, 1959 is not invalid because in its final form the same was got approved by Central Government as required by Section 115 (7) of States Reorganisation Act. Proposals involving change in service conditions of allocated Government servants were approved by Central Government before 26-4-1971. 1973 Lab IC 249 (259, 263) = 74 Bom LR 523 (DB).

(9) Protection under — Provisional gradation list — Public servant placed on lower pay scale cannot contend that new pay scales are to his disadvantage — He has option to retain his old pay scale. AIR 1970 Madh Pra 132 (153) = 1969 MPLJ 751 (DB).

(10) Scales of pay made available to employees of State Government could no longer be revised to their disadvantage. AIR 1969 Madh Pra 143 (144) = 1968 MPLJ 833 = 1969 Lab IC 953 (DB).

(11) Government of new State by order creating. with retrospective effect, new scales of pay governing permanent employees to their disadvantage — **Held.** order was not rule framed under Article 309 of Constitution and therefore not in conformity with Section 115 (7) (Obiter). AIR 1969 Madh Pra 143 (145) = 1969 Lab IC 953 = 1968 MPLJ 833 (DB).

(12) Directive of Central Government under Section 117 — Sanction of Central Government necessary for the State Government to act contrary to directive. AIR 1963 Punj 47 (55) = 1966 Cur LJ 848.

(13) An officer holding an officiating post has no legal right to continue in that post and therefore his reversion to substantive post for administrative reasons is not breach

Sections 115 — Note 10 (contd.)
of conditions of service within Section 115 (7). **AIR 1964 SC 1361 (1364, 1365) = (1964) 2 SCR 982.** (ILR (1961) 11 Raj 260, **Reversed.**)

(14) Government of India's letter dated 27-3-1957 Heading 'VI. Dearness Pay', para 5 — Mysore Government Official Memorandum No. SRDI-1 APM 57, Dt. 11-5-1957 — **Held,** considering facts and evidence on record, the posting of Petitioner who was already holding in substantive capacity post in Bompay Educational Service, Class I, as Dy. Director of Education was by way of promotion on officiating basis and as the period of officiating was less than three years, Petitioner was not entitled to benefit under Para 5 of Government of India's letter dated 27-3-1957. (1966) 5 Law Rep 52 (67) (Mys).

(15) Clerks appointed in Pepsu Govt. Service for whom Pepsu Rules were applicable — On States reorganisation clerks transferred to Punjab Government and promoted as Assistants — Under Punjab Rules 5, 6 passing of a test was necessary for promotion — Clerks not passing were reverted — Administrative instructions issued by Punjab Government applying Punjab Rules and norms — Instructions approved by Central Government under Section 115 — Such approval did not amount to change in service rules contemplated under Article 309 of Constitution of India — Administrative instruction cannot replace statutory rules — Reversions on grounds of not passing test, held were bad. 1968 Cur LJ 72 (77 to 81) (Punj) (DB).

(16) An employee of former Hyderabad State — Provisional allocation to new Mysore State — Compulsory retirement order and subsequent withdrawal of it — The period between order of retirement and order of withdrawal ordered to be treated as of suspension — No provision of suspension from previous date in Hyderabad rules which were saved under sub-section (7) — Order of suspension from date of retirement held invalid. AIR 1961 Mys 26 (27, 28, 29) = 38 Mys LJ 822.

11. Previous approval — Sub-section (7), proviso.— (1) Question of change of conditions of service — It has to be found out whether it amounts to change in conditions and, if so, whether there was prior approval of Central Government. **AIR 1973 SC 69 (76) = (1972) 2 SCC 862.**

(2) Previous approval of the Central Government, as contemplated by the Proviso. must not be presumed but must be either categorically given or that approval becomes unmistakably apparent from the correspondence between the State Governments and Central Government. **AIR 1972 SC 1640 (1646) = (1972) 1 SCR 896 = 1972 Lab IC 887.**

(3) Previous approval in proviso to Section 115 (7) includes general approval to the variations in conditions of service within certain limits indicated by Union Government. **AIR 1965 SC 136 (138) = (1964) 7 SCR 549.** (Making of Mysore General Services (Revenue Subordinate Branch) Recruitment Rules 1959, held to be with 'previous approval' of Central Government.) ** **1973 Lab IC 139 (166) (AP) (FB).**

[See also AIR 1968 Punj 499 (505, 506, 508) = ILR (1969) 1 Punj 23 (DB). (If the word previous in the proviso to Section 115 (7) has any meaning. it is this that the approval of the Central Government must precede the putting of the relevant rules into effect.)

(4) Proviso to Section 115 (7) is in nature of protection given to servants falling under Section 115 (1) or (2) — Promotion to a higher cadre is a condition of service and, rules defining qualifications and suitability for promotion form terms and conditions o service. AIR 1965 Mys 19 (21 to 25) = (1964) 1 Mys LJ 217 (DB).

(5) Proviso presupposes existence of conditions of service. **AIR 1971 Andh Pra 1 (8) = ILR (1972) Andh Pra 136 = 1971 Lab IC 30 (FB).**

(6) The law, proviso to Section 115 (7), itself insisted that the principles that were applicable before 1-11-1956 should be applied unless the law had been changed with prior approval. If there had been no prior approval of change as required by statutory provisions the principles that governed the matter before formation of new State must apply. ILR (1972) 2 Ker 482 (489, 490) (DB).

(7) Section 115 not only deals with matters of integration of service but sub-section (7) deals with conditions of service also — Mysore Government Order No. RD 35 ATS 68, dated 27-12-1968, held invalid as it affects conditions of services adversely and was issued without previous approval of Central Government. 1972 Lab IC 1204 (1205, 1206) = (1972) 1 Mys LJ 235 (DB).

(8) Mysore General Service (Treasury Branch) Special Seniority Rules, 1965. Rule 4 — Seniority — Promotion — Prescription of departmental examination for promotion — It is a variation of old condition of service — It is inoperative being without the prior approval of the Central Government. AIR 1971 Mys 108 (111) = 1971 Lab IC 469 (DB).
[See also (1969) 1 Mys LJ 199 (200).]

(9) Principles governing conditions of service by erstwhile Travancore-Cochin Government — Amendment by Government of Kerala without prior approval of Central Government constituted variation of conditions of service of petitioners to their disadvantage and was invalid and inoperative for contravention of proviso. 1971 Lab IC 118 (119) = 1970 Ker LT 1027.

(10) Petitioners appointed as temporary Tracers before merger of Punjab and Pepsu (1-11-1956) — Promotion of such petitioners after merger not governed by Punjab Public Works Department (Buildings and Roads Branch) Draftsmen and Tracers Service Rules, 1965 but by 1943 Rules — 1965 Rules not applicable for absence of previous approval of Central Government. 1971 Lab IC 993 (996, 997) = 1971 Cur LJ 314 (Punj).

(11) Service rules permitting private practice to medical officers of Hyderabad State prior to merger in Andhra Pradesh — Total ban on private practice by amendment of Rule 13 of Special Rules for Andhra Pradesh Medical Services without raising pay or giving any allowance affects their emoluments — Prior permission of Central Government not obtained before effecting amend-

116. Provision as to continuance of officers in the same posts.—(1) Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the Union or of an existing State in any area which on that day falls within another existing State or a new *[*] State or a †[Union territory] shall, except where by virtue or in consequence of the provisions of this Act such post or office ceases to exist on that day, continue to hold the same post or office in the other existing State or new *[*] State or †[Union territory] in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the Government of, or other appropriate authority in, such State, or by the Central Government or other appropriate authority in such †[Union territory,] as the case may be.

Section 115 — Note 11 (contd.)

ment — Amendment is void and inoperative in respect of doctors who belonged to Hyderabad State and who were appointed prior to its merger. ILR (1969) Andh Pra 1152 (1185).

(12) Public servant governed by Saurashtra Rules (1955) — His compulsory retirement under Rule 161 of the Bombay Civil Service Rules, 1959, before attaining age of 55 years, after States Reorganisation — Amounts to variation in his condition of service. **AIR 1970 SC 143 (146) = (1970) 1 SCR 244.**

(13) A Bombay State allottee to Mysore State was made to retire under rule 285 of the Mysore State Civil Service Rules — **Held** the application of Mysore State Rules varied to the disadvantage of the allottee the important condition of service relating to the length of service which he could claim under Bombay Civil Service Rules. The fact that the allottee opted to be governed by the Mysore State Pension Rules cannot take the place of approval by the Central Government required under proviso to sub-section (7). (1970) 2 Mys LJ 197 (198, 199) (DB).

(14) Competence of State Government to modify or amend service rules — Reorganization of States — Service conditions regarding age of retirement of Government servants in old State of Mysore — Governor of new State of Mysore, cannot alter without previous approval of Central Government — It was beyond competence of State Government to alter age of retirement which had been properly fixed by the then Rajpramukh of Mysore under Constitution. AIR 1962 Mys 280 (286, 287) = 40 Mys LJ 146 (DB).

(15) Ad hoc promotion of Sub-Inspectors of Police as Circle Inspectors, when they were transferred from Hyderabad State to the new State of Mysore, as a result of States Reorganisation Act — Reversion, on permanent incumbents coming back not reduction in rank. **AIR 1966 SC 175 (181) = (1964) 6 SCR 279.**

(16) Lower Division Clerks of Hyderabad State allotted to Andhra Pradesh — Their promotion to the posts of Upper Division Clerks is governed by Hyderabad Cadre and Recruitment Rules. The test prescribed in Andhra Pradesh Government order for promotion to cadre of Upper Division Clerk without prior consultation and previous approval of Central Government cannot be applied to them. 1972 Lab IC 108 (111) (Andh Pra).

(17) Order passed by State Government in matter of departmental promotion and special rules framed in accordance with that order. **Held,** there was no reason to interfere with the order in the matter of promotion. The promotions effected were in accordance with rules framed under Article 309 of the Constitution. 1968 Lab IC 1325 (1326) (Ker) (DB).

(18) Petitioners, the Sub-Inspectors in Excise and Prohibition Department under Madras Board of Revenue, allotted to Mysore State — Allocation of petitioner to excise and prohibition department — Revision of pay scales of police department — Petitioner cannot claim benefit of this revision of pay scales on the ground that in Madras the pay scale of both departments was the same. Section 115 (7) not attracted. (1964) 2 Lab LJ 433 (438) (Mys) (DB).

(19) Integration of Civil Services in new States — Disparity in pay-scales caused due to protection given to allottee civil servants from different States by the Act — Pay-scales cannot be attacked as discriminatory and repugnant to Arts. 14 and 16 of the Constitution — The higher scales of pay drawn by allottees who did not opt for new scales were by reason of pre-existing rights being protected by proviso to Section 115 (7). AIR 1963 Mys 202 (205) = 1963 Mys LJ (Sup) 384 (DB).

(20) Bangalore Road Transport Service Act (8 of 1956), Section 8 — Termination of service on reaching age of superannuation — Notice giving more than three months — Termination not illegal — Provisions of Section 115 (7) Proviso. not attracted. 1962 Mys LJ (Supp) 457 (460) (DB).

(21) Punjab Service Integration Rules (1957) — Rules are valid. AIR 1969 Punj 34 (40 to 43) = ILR (1968) 1 Punj 204. (AIR 1961 Mys 210, **Dissented from.**)

(22) Bombay Civil Service Rules (1959), Rule 161 — Validity — Rule does not violate proviso to Section 115 (7) of the Act. (1963) 4 Guj LR 945 (964 to 967) (DB).

(23) Rules in pre-reorganisation State prescribing percentage for filling of posts by departmental promotion — Alteration in the Rule after re-organisation does not amount to variation to disadvantage of civil servant. AIR 1963 Mys 265 (270) = 1963 Mys LJ (Supp) 525 (DB).

SECTION 116 — SYNOPSIS

1. Scope.

2. Sub-section (2).

1. Scope.— (1) To attract the provisions of Section 116 it has first to be established by

(2) Nothing in this section shall be deemed to prevent a competent authority after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office.

[°] The word and letter "Part A" were omitted by **1 A.L.O., 1956 (1-11-1956).**

[†] Substituted for "Part C State", ibid.

Section 116 — Note 1 (contd.)

the petitioners that they were holding or discharging the duties of any post immediately before the appointed day. Where the services of the petitioners stood terminated prior to the appointed day, it could not be said that they were holding or discharging the duties of any post immediately before the appointed day. AIR 1959 Bom 363 (368) = ILR (1959) Bom 1267 (DB).

(2) Section 116 provides for continuance of officers in equivalent posts. The protection given by proviso to Section 115 (7) could not be removed by rules made by State Government subsequent to 1-11-1956 unless previous approval of Central Government was obtained thereto. **AIR 1971 SC 117 (119, 120) = (1970) 3 SCR 515.**

(3) The Central Government is not expected to act judicially in the course of proceedings under Section 116 — Persons making detailed representations — They are not entitled as of right to be heard orally in the proceedings under Section 116. AIR 1969 Punj 34 (43) = ILR (1968) 1 Punj 204.

[See also AIR 1967 Punj 98 (102, 103) = 1965 Pun LR (Supp) 477.]

(4) Integration of personnel — Personal hearing by Central Government — Not a procedural essentiality because statute does not cast any such duty — Central Government taking decision in consultation with Central Advisory committee, State Government and considering all representations received from time to time — **Held** procedure adopted was adequate. AIR 1968 Andh Pra 5 (15, 16) = (1967) 1 Andh WR 102 = 1968 Lab IC 12 (DB).

(5) The object of Section 116 (1) was to regularise what would have been an irregular state of affairs so far as public services were concerned on the appointed day. There would be officers belonging to the hitherto existing State holding office or discharging duties of posts and offices in the area which on that day would stand transferred to a new State. As such officers would not cease to belong to the service of the former existing State, a question might arise as to their competency to act as officer in an area which was no longer part of that State. It is to overcome this difficulty that the aid of a fiction is sought and such officers are deemed as from that day to have been duly appointed to their respective posts and offices by the Government of the new State. AIR 1957 Mad 769 (771) = ILR (1957) Mad 1010 (DB) ** AIR 1969 Mys 41 (44) = (1968) 2 Mys LJ 166 = 1969 Lab IC 165.

(6) A person who was placed under suspension and relieved of his office before the appointed day cannot be deemed to have been appointed to any post or office in the new State. Rule 13 of the Fundamental Rules has no bearing on the question because it does not imply that even while under suspension a Government servant is holding a post but merely relates to the retention of the lien on a substantive permanent post while under suspension. AIR 1957 Mad 769 (771) = ILR (1957) Mad 1010 (DB).

(7) Government taking over management of private Trust fund and treating its employers as Government servants — Services rendered by them in Trust fund are to be treated as part of services rendered under Government. AIR 1969 Mys 346 (347, 348) = (1969) 1 Mys LJ 415 = 1969 Lab IC 1357 (DB).

(8) The consequence of the formation of new State of Mysore with the territories of old State of Mysore and territories of four other States was that the officers from the other States as well as from the old State of Mysore became officers of new State and the question of their integration inter se had to be decided in accordance with Section 115. Where, in the interests of administration, ad hoc promotions were made out of eligibility lists received from various States reversions resulting from promotions in accordance with provisional list were not discriminatory. **AIR 1966 SC 175 (179) = (1964) 6 SCR 279.**

(9) Power of Central Government is not exhausted merely by laying down criteria for final allotment and integration but continues till entire process of integration is completed and all representations considered. In case of any doubt as to true implication of process of integration, Central Government has power to clarify it on further representations from parties affected. AIR 1968 Andh Pra 5 (13, 14) = (1967) 1 Andh WR 102 = 1968 Lab IC 12 (DB).

(10) Allotment and reversion of Civil servant not according to scheme of Act — Central Government need not make new allotment of Civil servant since such fresh allotment is superfluous and unnecessary under Section 116. AIR 1967 Mys 225 (231) = (1966) 8 Law Rep 448 (DB).

(11) Central Government having no knowledge of reversion of Civil Servants making comprehensive allotment of all civil servants and not any individual allotment — **Held,** question whether allotment made by Central Government was for any reason unsupportable did not arise. AIR 1967 Mys 225 (230) = (1966) 8 Law Rep 448 (DB).

(12) Officers of erstwhile Hyderabad State, though not integrated with District Health officers of Andhra Pradesh were considered eligible for promotion as Assistant Director of Public Health and were allowed to count their continuous Service in Health wing of Hyderabad for promotion and seniority while officers in Andhra Pradesh were to count their service in Health and Medical department — Principle held not violative of Article 16 of the Constitution. AIR 1968 Andh Pra 5 (16, 17) = (1967) 1 Andh WR 102 = 1968 Lab IC 12 (DB).

(13) Allotment of physical instructors from five regions to new State of Mysore on re-

Section 116 — Note 1 (contd.)

organisation — Assignment of higher pay scale for allottees from one State and lower pay scale for allottees from another held discriminatory and unjustified. AIR 1969 Mys 348 (349) = 1969 Lab IC 1466 = 1969 Serv LR 481 (DB).

(14) The allottee can complain of prejudice only if the pay scale of a post to which he is promoted in the new State is lower than the pay scale of a similar or equivalent post in his parent State, to which he would have been promoted. If the post in the parent State which carries higher salary in a superior post whose functions and responsibilities are more important and heavier than those of the post to which he is promoted in the new State, he cannot complain of any prejudice at all. AIR 1970 Mys 112 (113) = (1970) 1 Mys LJ 403 (DB).

(15) Language of Section 116 of the States Reorganization Act — By force of law, all the employees of the Bombay State Road Transport Corporation allotted to the State Govt. of Mysore for the purpose of service under that Government, must be taken to have the same status as the one which they could have if they had in fact been appointed to the posts or offices held by them, by the State Government of Mysore or an appropriate authority under that Government exercising that power. AIR 1963 Mys 66 (71, 73) = 1962 Mys LJ (Sup) 49.

(16) Where the notification. under which a magistrate taking cognisance of a case was appointed, was repealed by the State government appointing him owing to reorganisation of States, it was held that in view of Section 116 he can continue the proceedings whether the Government of the new State has issued a fresh order of appointment or not. 1957 Nag LJ 508 (511).

(17) The provision in Section 116 was necessary so that State servants holding particular posts may continue to carry on their work as before without the necessity of any separate formal orders. **AIR 1965 Punj 444 (448) = 67 Punj LR 715 (FB).**

(18) Civil Servants have right after allotment to hold posts in new State corresponding to their posts in the parent State — The fact that there were no corresponding vacant posts in the new State was no ground for reverting them to their substantive posts in new State, so long as there were in existing parent State vacant posts in which they could have been continued. It is not the Scheme of the Act that every employee should be sent out of parent State to new State. AIR 1967 Mys 225 (229) = (1966) 8 Law Rep 448 (DB).

(19) Sub-Inspector in Consolidation Department in Pepsu holding same office after its merger with Punjab — No appointments made for posts of Sub-Inspectors in Punjab — Appointment must be held to have been made by State Government of Punjab under Section 116 (1) — Proper Authority to dismiss him was State Government and not Director of Consolidation of Holdings. AIR 1964 Punj 480 (480, 481) = 1964 Cur LJ 325 (DB).

(20) Persons promoted to particular posts by State Governments before date of integration could claim benefit of Section 116. AIR 1963 Mys 219 (225) = 1963 Mys LJ (Supp) 302 (DB).

(21) Petitioner the District Welfare Organiser in former Vindhya Pradesh, allowed to continue in the same post in M. P. after reorganisation — Continuance of service as District Welfare Organiser held did not confer any right to be continued in the same post — In integration list District Welfare Organiser's post in V. P. equated with post of Circle Organiser in M. P. — Petitioner's posting as Circle Organiser in M. P. held did not amount to reduction in rank. AIR 1966 Madh Pra 134 (135) = 1965 MPLJ 825 (DB).

(22) Officials belonging to various services bearing different designations and having different terms and conditions of service by virtue of their allotment to the service of the reorganised States under the Act are deemed to have been appointed to the service of the new State as on 1-11-1956 the appointed day, by virtue of sub-section (1) of Section 116. AIR 1968 Mys 73 (81) = (1968) 2 Mys LJ 299 (DB).

2. Sub-section (2).— (1) Section 116 (2) does not empower State Government to vary conditions of service disadvantageously to employee. **AIR 1971 Andh Pra 1 (9) = 1971 Lab IC 30 = ILR (1972) Andh Pra 136 (FB).**

(2) Under Section 116 (2), State Government is empowered to pass in relation to any allocated servant any order affecting his continuance in any post or office previously held by him — Provisional arrangement may prejudice the public servant but that is only a temporary disadvantage which is expected to be corrected at the time of final arrangement. AIR 1970 Madh Pra 132 (153) = 1969 MPLJ 751 (DB).

(3) Section 116 (2) clarifies that S. 116 (1) would not prevent competent authority after appointed day from passing in relation to a civil servant any order affecting his continuance in his post or office — It gives power and jurisdiction to State Government to pass any order regarding his continuance in office by reason of his misconduct during anterior period. ILR (1965) Andh Pra 482 (505) (DB).

(4) Order imposing penalty viz. stopping increment passed by Punjab State Government, but not communicated to public servant before reorganization remains ineffective and still-born — Successor State of Haryana cannot give effect to that order without reconsidering the matter and applying its mind. AIR 1971 Punj 48 (50) = 1970 Cur LJ 579 = 1971 Lab IC 201.

(5) Officiating Tahsildars in State of Pepsu confirmed as Tahsildars although no posts were available for confirmation — Supernumerary posts of Tahsildars created subsequently by Rajpramukh of Pepsu, to provide liens for confirmed Tahsildars — Merger of Pepsu with Punjab under States Reorganisation Act — Subsequent order of successor Punjab Government. cancelling previous order of confirmation — Valid. **AIR 1964 SC 521 (526) = (1964) 4 SCR 964.**

(6) The powers of the State Government were expressly saved by sub-section (2) of

117. Power of Central Government to give directions.—The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions.

Section 116 — Note 2 (contd.)

Section 116 and permits it being a competent authority, to pass, in relation to person officiating at the time of merger order affecting his continuance in the officiating post. **AIR 1964 SC 1361 (1365) — (1964) 2 SCR 982.**

(7) Sub-section (1) of Section 116 is a temporary measure. It is enacted to provide that every person who, immediately before the appointed day, was holding certain post or discharging duties of any post or office in the former State shall continue to hold the same post or office in the new State and to have been duly appointed to such post with effect from that date. The continuance to hold a post or an office is subject to right of State Government to integrate services and to absorb servant concerned or to appoint him to an equivalent post. 1968 Lab IC 264 (267) = (1967) 1 Lab LJ 210 (Guj) (DB).

(8) Transfer of Rajasthan area to M. P. State during States Reorganisation — Government servant working in transferred area would be deemed to be a servant of M. P. State from 1st November, 1956 — After that date, it would be the M. P. Government which would be competent to start departmental proceedings against him for misconduct although there was delay in passing the order under Section 115 (3) — Case falls under Section 116 (1) — Section 116 (2) has no application. AIR 1963 Madh Pra 216 (217, 218) = 1963 Jab LJ 98 (DB).

(9) Person joining service in State of Pepsu and confirmed by Rajpramukh of Pepsu — Such person transferred to office of Financial Commissioner Revenue, after formation of Punjab State — Such person dismissed from service by Financial Commissioner Revenue — Dismissal is valid. 1966 Cur LJ 968 (974) (Punj) (DB).

Section 117 — Note 1

(1) Directions given by Central Government under Section 117 are binding on the State in the matter of integration of services. When integration of services in question are not complete, even promotion made on basis of directions issued under Punjab Services Integration Rules (1957) ought to be reviewed in the light of directive of Central Government under Section 117. **AIR 1972 SC 586 (590) = 1973 Lab IC 477 = (1972) 1 SCWR 188.**

(2) Punjab Clerical Service Rules 1960 do not apply to persons governed by S. 115 of the Act as they were not issued with the previous approval of the Central Government under Section 115. Inter se seniority of such persons have to be decided according to the directions given by the Central Government under Section 117 in this behalf read with Section 127. **AIR 1972 SC 1640 (1645) = (1972) 1 SCR 896 = 1972 Lab IC 887.**

(3) There is nothing in S. 115 or Section 117 which prohibits Central Government in any way from taking aid and assistance of State Government in the matter affecting integration of services. So long as the act of ultimate integration is done with sanction and approval of Central Government and so long as Central Government exercises general control over activities of State Government in the matter it cannot be held that there has been any violation of principle "delegatus non protest delegare". It could not be said that preparation of provisional and final gradation lists by State Government constituted a delegation by Central Government. **AIR 1968 SC 850 (857) = (1968) 2 SCR 186.** (AIR 1964 Madh Pra 307, **Reversed.**)

(4) The principles are the important elements in the matter of integration. The drawing up of the seniority list and publication thereof are only implementation of these principles. Such implementation can be done by State Government. **AIR 1970 Ker 165 (188) = ILR (1969) 2 Ker 391 = 1970 Lab IC 967 (FB).**

(5) Section 117 does not empower the Central Government to divest itself of its duty to make the integration and direct the State to do that work. But the conferment of authority on the Central Government to make the integration does not deprive the Government of the State of its power to transitionally reorganise its administrative structure, provided its exercise does not infringe constitutional guarantees or violate the protection afforded by the proviso appearing under S. 115 (7) of the Act. AIR 1961 Mys 210 (219) = 39 Mys LJ 425 (DB).

(6) The four principles evolved at a meeting of Chief Secretaries and communicated to all State Governments, have acquired statutory force as understood to have been issued by the Central Government under Section 117. Those principles have to be applied to a case before the equation of posts and inter se seniority can be determined by the Government. Where no conscientious effort was made to apply those principles by the Advisory Committee, the final inter-State seniority list was liable to be quashed. (1970) 2 Mys LJ 184 (185, 187) (DB).

[See also 1972 Lab IC 465 (468, 469) = (1971) 2 Mys LJ 396 (DB).]

(7) State Government preparing provisonal intergrated gradation list for purposes of Reg. 4, Indian Administrative Service (Appointment by Promotion) Regulations, 1955 — Appeals to Central Government by aggrieved persons — Central Government directing State Government to change criterion for eligibility. without giving others opportunity to show cause — Central Government is competent to give such directions and State Government is bound to follow them — High Court will not interfere under Article 226 until adoption of particular criterion is provisional. **AIR 1965 Ker 84 (89) = 1964 Ker LT 704 (FB).**

(8) In matters relating to integration resulting from State reorganisation, Central

Section 117 — Note 1 (contd.)

Government is final authority. **AIR 1970 Ker 165 (168) = ILR (1969) 2 Ker 391 = 1970 Lab IC 967 (FB).**

(9) A direction contained in a letter from Deputy Secretary to the Government of India, Ministry of Home Affairs to the Chief Secretary to Government of Rajasthan dated 27-3-1957 to the extent to which it protected the pay of certain officers might have effect under Section 117 but beyond it, subject to proviso to Section 115 (7), powers of State Government were not intended to be curtailed and in fact, they were expressly saved by Section 116 (2). **AIR 1964 SC 1361 (1365) = (1964) 2 SCR 982.**

(9A) Post of Assistant Conservator of Forests Madras — It cannot be equated with those of Deputy Conservators of Forests of erstwhile States of Bombay and Hyderabad — **Held,** that Rule 8 of the Rules governing Madras Forests service alone determines initial seniority of directly recruited Assistant Conservators of Forests and not Rule 35 of the Madras State and Subordinate Services Rules. (1973) 1 Mys LJ 440 (445, 447) (DB).

(10) In view of the directive in para 5 of the Government of India Memorandum dated 12-5-57, a Government servant allotted to a new State is entitled to the protection of the pay scale that would have been admissible to him on his first promotion in his parent State, if that scale is more favourable than the scale attached to the post to which he is promoted in the new State. Before, one could say that a pay scale is higher than another with reference to posts, there must be equivalence of functions and responsibilities. AIR 1970 Mys 112 (113) = (1970) 1 Mys LJ 403 (DB).

[See also (1973) 1 Mys LJ 220 (DB).]

(11) Directives dated 18-4-1965 and 24-2-1968 issued by the Government of India to Punjab Government for fixation of seniority, and promotion of integrated services are binding on the State Government. (1971) 1 Serv LR 514 (522) (Punj) (DB).

[See also AIR 1968 Punj 47 (54, 55) = 1966 Cur LJ 848. (If State Government wants to act contrary to directive, it is necessary for State to take sanction of Central Government under Section 115 (7). ** AIR 1962 Mys 112 (114) = 40 Mys LJ 62 (DB). (If the directions are disobeyed remedy of aggrieved person is to submit representation to the Central Government only through the State of which he is civil servant.)]

(12) An allottee to the services of a new State after States Reorganisation and to whom the second alternative contained in the directive issued by Government of India does not apply is entitled to limited protection given by first alternative in drawing pay on promotion to a post in new State one stage above the one held by him in substantive capacity. **(1969) 1 SCWR 509 (511).**

(13) Any rule framed by State Government which interfered with the seniority as conferred by final gradation list in pursuance of integration scheme framed by Central Government, sanction of Central Government would be necessary. Any order issued by Director of Public Instruction ordering compilation of seniority list for promotion to posts of teaching side, category III cannot have the effect of disturbing seniority list, as per Final Gradation list. 1973 Lab IC 1166 = 1972 MPWR 566 (578).

(14) Where Government had expressly made promotions of certain Tahsildars to Deputy Collectors temporary without prejudice to claim of others for regular promotions and Tahsildars understood promotions to be temporary, they are not entitled to claim posts of Deputy Collectors permanently in supersession of claims of others. AIR 1968 Andh Pra 364 (369. 370) = (1969) 1 Andh WR 17 = 1968 Lab IC 1499.

(15) Central Government can issue directions even after integration of services in the new State — Power to ensure fair and equitable treatment continues to be available until the last of the officials allotted to the new State retires. (1967) 2 Mys LJ 544 (562) (DB).

(16) State Government creating new scheme of Assistant Section Officers and, ignoring case of senior person, promoting others on the basis of new scheme — State Government also not reviewing promotion in accordance with directive issued by Central Government — Promotions held invalid — Scheme with regard to Section Officer could not operate so as to defeat the directive of Central Government. 1969 Lab IC 909 (913) = 1969 Serv LR 423 (Punj) (DB).

(17) Integration of servants of High Court on merger of Punjab and Pepsu States — Chief Justice of Punjab High Court and not the Central Government is the final authority. **AIR 1965 Punj 444 (448) = 67 Punj LR 715 (FB).**

(18) Letter to State Government purporting to give directions under Section 117 — Use of word "request" and failure to mention Section 117 would not take away the fact that Central Government was giving directions under Section 117. (1967) 2 Mys LJ 544 (561) (DB).

(19) The directions given by the Central Government to Mysore Government in its letter dated 5-1-1962 are of general character and apply to all allottees to Mysore State in whatever departments they may be. (1967) 2 Mys LJ 544 (565) (DB).

(20) Offcial Memorandum No. CHS 20223-333/Miscellaneous 97-57-6 dated 9-2-1956 of the Central Government had not the status of direction under Section 117 as it did not purport to give effect to provisions of Part X of the Act — It tendered only administrative advise. AIR 1963 Mys 219 (219, 220) = 1963 Mys LJ (Sup) 302 (DB).

(21) Equation of posts under S. 115 (5) (b) and S. 117 — High Court powerless to go into merits or otherwise of such equation. **AIR 1973 SC 2102 (2107).**

118. Provisions as to State Public Service Commissions.—(1) The Public Service Commissions for the existing States of Bombay, Mysore, Punjab, Rajasthan and Travancore-Cochin shall, as from the appointed day, be deemed to be the Public Service Commissions for the corresponding new States.

(2) As from the appointed day, the Public Service Commissions for the existing States of Hyderabad, Madhya Bharat, Madhya Pradesh, Patiala and East Punjab States Union and Saurashtra shall cease to exist.

(3) Every person holding office immediately before the appointed day as chairman or other member of any of the Commissions mentioned in sub-section (2),—

(a) shall become a member, and if so specified also the chairman, of such one of the Public Service Commissions for the States of Andhra Pradesh, Bombay, Madhya Pradesh, Punjab and Mysore as the President shall by order specify; and

(b) shall, as such member or chairman, be entitled to receive from the Government of the State conditions of service not less favourable than those to which he was entitled under the provisions applicable to him immediately before the appointed day.

(4) Every person who becomes a member of a Public Service Commission on the appointed day under sub-section (1) or sub-section (3) shall, subject to the proviso to Clause (2) of Article 316, hold office or continue to hold office until the expiration of his term of office as determined under the provisions applicable to him immediately before the appointed day.

PART XI
LEGAL AND MISCELLANEOUS PROVISIONS

119. Territorial extent of laws.—The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

SECTION 119 — SYNOPSIS

1. Scope and applicability.

2. Law in force.

3. Equal protection of laws.

1. Scope and applicability.— (1) The scheme of States Reorganisation Acts (including Punjab Reorganization Act) makes the laws applicable to the new areas until superseded, amended or altered by the appropriate legislature in the new States. This is what the legislature has done in 1967 when it amended Punjab General Sales Tax Act (1948) and there is nothing that can be said against such amendment. **AIR 1970 SC 1742 (1749) = (1969) 2 SCR 544.**

(2) The provision in S. 119 of the Act is attracted where different sets of laws may be in force in different States which are brought under integration under the States Reorganisation Act. This section has no application in the case of a Central Act which is in force throughout the Indian Union. AIR 1962 Raj 218 (220) = 1962 Raj LW 301 (DB).

(3) Section 119 preserves the continuance of the laws in the Telangana, after reorganisation, till suitably modified by the appropriate authority. ILR (1958) Andh Pra 106 (115) (DB).

(4) Sections 119 and 120 have conferred power not only upon the State Legislatures to alter laws but also on any other competent authority. So far as the rules in regard to the process fee are concerned, it is the High Court that is the competent authority. As the Andhra Pradesh High Court had promulgated rules in regard to the matter to govern after 1-11-1956, the process fee for a process issued after that date in the appellate jurisdiction of the High Court will be governed by Rule 61 of the Appellate Side Rules irrespective of the fact that the appeal itself was filed before the formation of the Andhra Pradesh High Court at a time when the Hyderabad High Court was in existence. AIR 1959 Andh Pra 279 (279, 280) (DB).

(5) The Road Transport Department of the erstwhile Hyderabad State is not different from the State undertaking as defined in Chapter IV-A of Act 100 of 1956. Section 119 of the S. R. Act does not come into play in this regard for the reason that the laws prevailing in one part of the State are not sought to be extended to another part. Section 119 has nothing to do with the two States (Andhra Pradesh and Hyderabad) becoming one State or one Government on account of the merger. AIR 1959 Andh Pra 292 (300) = ILR (1958) Andh Pra 437 (DB).

(6) If a petitioner seeks the conferment of the privilege of audience in the Andhra Pradesh High Court he must be bound by the conditions under which such privilege is conferred. To such a privilege Section 119

Section 119 — Note 1 (contd.)
is not applicable, but the law prescribing the conditions subject to which right of audience is given in that Court governs the situation. **AIR 1958 Andh Pra 63 (65, 66) = ILR (1957) Andh Pra 467 (SB).**

(7) The only object of Section 119 of Act (37 of 1956) is to keep alive the laws and regulations in the territories taken over and merged into the new State and not to nullify the reorganisation itself by creating a fiction that they still form part of the previous State of origin which in some cases altogether ceased to exist. (1963) 1 Mad LJ 365 (368) (DB). (Travancore Cochin General Sales Tax Act — Dealer in territories in former Travancore-Cochin State — Territories becoming part of the Madras State — Dealer was held to be last purchaser for the levy of sales tax in State of Madras.)

(8) Reference to 'High Court' in Sch. II, Serial 1 (d) of Hyderabad Court-fees Act can be construed to be reference to Andhra Pradesh High Court at Hyderabad, in view of Section 119. AIR 1957 Andh Pra 123 (128) = ILR (1957) Andh Pra 229 (DB).

(9) Sections 119 and 120 have no relevancy whatsoever to the question as to whether an appeal would lie under Clause 15 of the Letters Patent against a judgment of a Judge of the High Court of Andhra Pradesh. They only save the operation of the existing laws until such laws are adapted, modified or repealed by the competent legislature. AIR 1961 Andh Pra 390 (392) (DB).

2. Law in force.— (1) Madras Ministerial Service Rules constitute 'law' within the meaning of that expression as defined in Section 2 (h) of S. R. Act under Section 119 of the said Act, until framing of unified, special rules for the concerned service either by Governor of Kerala or by State Government. Madras Ministerial Service Rules would continue to govern ministerial service personnel who were allotted to Kerala State from erstwhile composite State of Madras. **1973 Ker LT 151 (FB).**

(2) Mulki Rules continue in force even after constitution of State of Andhra Pradesh under the Act. **AIR 1973 SC 827 (832) = (1973) 1 SCJ 241.**

(3) The Service Rules made under Article 309 of the Constitution being a law in force in the Telangana region on the date the States Reorganisation Act came into force, continued to be in force in that territory after the formation of Andhra Pradesh by virtue of Section 119 of S. R. Act and the personnel who were governed by those rules continued to be so governed. **AIR 1971 Andh Pra 1 (7. 8) = 1971 Lab IC 30 = ILR (1972) Andh Pra 136 (FB).**

(4) The purpose of Sections 119 to 121 in relation to Rule 4 (b) of the All India Service (Discipline and Appeal) Rules (1955) was to provide remedies in the matter of enquiries against delinquents — Since the Government of Hyderabad was succeeded by three Governments and Rule 4 (b) extended or applied to territories merged in three States, anyone of three could initiate proceedings and therefore State of Andhra Pradesh was competent to take action. As a principal successor State, Andhra Pradesh would be competent to take action, after merger, in respect of acts of commission and omission committed by member of Indian Administrative Service while in Service of Hyderabad State. ILR (1966) 1 Punj 668 (676. 678, 679).

(5) A rule made by a High Court under Section 122 Civil P. C. is a piece of delegated or subordinate legislation. It will be governed by Section 119 and not Section 54 of of the S. R. Act. AIR 1960 Madh Pra 130 (132).

(6) Vexatious Litigation (Prevention) Act (Mad. Act VIII of 1949) — Applicability — Act does not apply to Telangana area of State of Andhra Pradesh. **AIR 1965 SC 1827 (1830 to 1832) = (1965) 3 SCR 700.** (AIR 1962 Andh Pra 4, **Reversed.**)

(7) The law obtaining in the State of Hyderabad before the appointed day would still govern the rights of parties in the Telangana area. The law of court-fees obtainable before that date in the State of Hyderabad is the Hyderabad Court-fees Act and, therefore, that Act governs the proceedings arising out of that area. AIR 1957 Andh Pra 123 (128) = ILR (1957) Andh Pra 229 (DB).

(8) Section 119 only preserves the laws prevailing in the Telangana area till the Legislature or other competent authority provides otherwise. The laws will be applied as if there was no territorial change. But Section 119 cannot preserve any laws governing the jurisdiction and procedure obtaining in the Hyderabad High Court which ceased to exist from the appointed day. When the High Court itself became defunct it is not possible to hold that the laws governing its jurisdiction and procedure continue to exist. AIR 1958 Andh Pra 60 (62) = ILR (1957) Andh Pra 660 (DB).

(9) Excess Profits Tax Act (1940). Sec. 1 (2) — Whether all the provisions of the Act remained in operation in Bellary District in spite of the Adaptation of Laws Order, 1956 by reason of the combined operation of Section 53. Andhra Pradesh Act (30 of 1953) and Section 119 of States Reorganisation Act 1956 (Quaere). **AIR 1967 SC 1541 (1545) = (1967) 3 SCR 864.**

(10) 'Law in force' — Whether includes case-law — Decisions of Bombay High Court given prior to 1-5-1960 — Decisions are binding on Gujarat High Court as successor Court on principles of judicial comity and not as 'law in force' within S. 87 of the Bombay Reorganisation Act, 1960. **AIR 1962 Guj 128 (134, 138, 139) = (1962) 3 Guj LR 269 (FB).**

(11) The effect of Section 119 is that the Bombay District Municipal Act would still be the law in the area which belonged to the State of Bombay but which had since come to the State of Mysore. Therefore, Section 22 (2) of that Act could still apply to the area which has been transferred to Mysore State. AIR 1958 Mys 184 (187) = ILR (1958) Mys 48 (DB).

(12) By virtue of the definition of law in the Act, a notification issued under the provision of a statute can be law for the purposes of the Act if it has the force of law in the whole or in any part of the territory of India and therefore, the notification issued

Section 119 — Note 2 (contd.)

by the Bombay Government can be said to be law in force immediately before the appointed day. AIR 1958 Mys 184 (187) = ILR (1958) Mys 48 (DB).

(13) Notification under S. 20. Prevention of Food Adulteration Act — **Held** amounted to law and survived in Malabar District after its integration with Kerala. 1962 (1) Cri LJ 647 (648, 649) = 1961 Ker LT 415.

(14) Market Committee of Bellary could only levy a fee under Section 11 (1) of the Madras Commercial Crops Markets Act, 1933 as it originally stood — It could not levy Cess by way of sales tax under that section as amended by Madras Commercial Crops Market (Mysore Amendment and Validation of Levy and Cess) Act 20 of 1958. **AIR 1971 SC 1325 (1328, 1329) = (1971) 2 SCC 255.** (13 Law Rep 327, **Reversed.**)

(15) After the reorganisation of the States, South Kanara District as well as the territories of the old Mysore State both belonged to and were parts of the same State the new Mysore State. The legal effect of Section 119 was that the territorial operation of the various laws or statutes of different States, parts of which were integrated into the new Mysore State, remained unaffected, i.e. they continued to be operative until they are modified or replaced by legislation of competent Legislature or authority. AIR 1960 Mys 275 (276) (DB).

(16) The power delegated to Sales Tax Officers by Collector under Section 14 of the Bombay Sales Tax Act, 1953 had not lapsed on coming into force of the States Reorganisation Act. The Commercial Tax Officers who replaced the Sales Tax Officers in the reorganised Mysore State did get jurisdiction to function under Section 14 of the Bombay Act. (1962) 13 STC 940 (943) (Mys) (DB).

(17) Sales in Fort Cochin during period from 1st April, 1957 to 31st March, 1958 — Travancore Cochin General Sales Tax Act coming into operation there on 1st October, 1957 — Assessment of sales from 1st October 1957 to 31st March, 1958 under the Travancore-Cochin General Sales Tax Act (11 of 1125), would be justified but in respect of sales for the period from 1st April, 1957 to 30th September, 1957 the sales tax law in force in Fort Cochin was the Madras General Sales Tax Act, 1939, and consequently the assessment under the Travancore-Cochin would not be in order. 1963 Ker LJ 731 (732) (DB).

(18) Madras General Sales Tax Act was allowed to be operative in Malabar Area under States Reorganisation Act — Sales in Malabar area prior to 1956 — Kerala State has power to assess and levy sales tax under Madras General Sales Tax Act, in respect of sales taking place in Malabar area in the year 1953-54. after reorganisation, when Malabar became part of Kerala. 1961 Ker LJ 1264 (1270) (DB).

(19) Taxation Rules framed by Hyderabad High Court and by High Court of Andhra Pradesh — Cases instituted in Telangana area when Hyderabad High Court was functioning — Rules not abrogated by S. 119, States Reorganisation Act — Effect was to preserve those Rules with regard to actions instituted at the time the former High Court of Hyderabad functioned — Advocates' fees will be governed by Hyderabad Taxation Rules and not by Rules of High Court of Andhra Pradesh. AIR 1965 Andh Pra 272 (273, 274) = (1965) 2 Andh WR 37 (DB).

(20) At commencement of suit parties not having right of Letters Patent Appeal — Subsequently area transferred to Madras State by virtue of States Reorganization Act — **Held** intendment of Act was that appeal should be disposed by Madras High Court — Parties got right of Letters Patent appeal. AIR 1966 Mad 32 (34, 35) = (1965) 2 Mad LJ 123 (DB).

(21) Territory in Madras State where appeal was pending before reorganisation of States transferred to State of Mysore — Madras Civil Court Act continued to be in force there in view of Section 119 — Ascertainment of corresponding appellate court is by reference to Mysore Civil Courts Act — Notification issued on 30-10-1957 under Section 120 creating a separate court for K, held, did not operate retrospectively so as to affect proceedings transferred under Section 125. (1963) 2 Mys LJ 456 (458).

(22) Judicial Magistrates of former M. B. State are duly empowered to take cognisance under Section 190, Criminal P. C. — M. B. Notification No. 242 (v) J. 438-4-54 published in M. B. Gaz. D/- 23-12-1954 which specially empowered all the Magistrates in the Judicial Service of the State under Section 190 (2) Criminal P. C. continues, by virtue of Section 119 read with Section 2 (b) of the States Reorganisation Act, to remain in force in the territories of the former M. B. State even after reorganisation. 1961 MPLJ 117 (118).

(23) Court-fee — Refund — Appeal to Mysore High Court from decree passed by Dharwar Court in erstwhile Bombay State after reorganisation — Appeal settled out of court — Even in the matter of refund of court-fees, it would be governed by Indian Court-fees Act, 1870 as applied to territories of erstwhile State of Bombay and not by Mysore Court-fees and Suits Valuation Act, 1958 — Appellant held not entitled to refund of court-fees — Law applicable. (1962) 40 Mys LJ 263 (267) (DB).

(24) Suit for possession of agricultural land — So far as State of Maharashtra is concerned before and after reorganisation of States, no rules for purpose of valuation for jurisdiction for suits falling under Section 6 (v) of the Bombay Court-fees Act have been made by this State or its predecessor State — For purposes of jurisdiction suit has to be valued at market value. 1970 Mah LJ 457 (458, 459).

(25) Under Sections 119 and 120 of S. R. Act, 1956 the Madras Marumakkatayam Act, of 1932 will continue to have operation in territories which have been taken away from the composite State of Madras and added to the Kerala State subject to such adaptations and modifications as may be made by the Kerala legislature in relation to such territories. Therefore, the modifications made by Kerala legislature to the Madras Marumakkatayam Act of 1932 will have effect only

120. Power to adapt laws.—For the purpose of facilitating the application of any law in relation to any of the States *[or Union territories] formed or territorially altered by the provisions of Part II, the appropriate Government may, before the expiration of one year from the appointed day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression "appropriate Government" means—

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law—

(i) in its application to a †[*] State, the State Government, and

(ii) in its application to a ‡[Union territory,] the Central Government.

[°] Inserted by 1 A.L.O., 1956 (1-11-1956).

[†] The word and letter "Part A" were omitted, ibid.

[‡] Substituted for "Part C State", ibid.

Section 119 — Note 2 (contd.)

in relation to territories which have come within its legislative control. AIR 1972 Mad 10 (13) = (1971) 2 Mad LJ 220.

(26) Policy underlying Section 119 is not to suddenly disturb the legal rights and obligations of people in respective territories which were being merged in one State — Merger of Pepsu in the Punjab — Acts in both territories continued in force for the time being resulting in different rights — Does not amount to inequality before law within Article 14 — Pepsu Act not invalid. AIR 1963 Punj 522 (530, 531) = 65 Pun LR 479 (DB).

(27) Hyderabad Legislative Assembly (Prevention of Disqualification) Act (18 of 1955) — Not operative after reorganisation of States — Not available for removing disqualifications of members for being chosen to Legislative Assembly of reorganised State of Mysore — Hyderabad Act was by implication repealed by Mysore Legislative Assembly (Prevention of Disqualification) Act (4 of 1957). AIR 1963 Mys 81 (106, 107) = 39 Mys LJ 107 (DB).

3. Equal protection of laws.— (1) C. P. and Berar Sales Tax Act (21 of 1947) as extended to Vindhya Pradesh does not violate Article 14 of the Constitution after reorganisation of States when Vindhya Pradesh became part of Madhya Pradesh — It can be sustained on the ground that differentiation arises from historical reasons and a geographical classification based on historical reasons can be upheld as not being contrary to equal protection clause in Article 14. **AIR 1962 SC 981 (988) = 1962 Supp (2) SCR 257.**

(2) Provisions of Hyderabad Markets Act cannot be challenged on the ground that there being no law similar to the Act in force in Andhra area, there is discrimination which is hit by Art. 14 under Section 119 of the States Reorganisation Act, the Act continues till repealed by appropriate legislature and the classification being a geographical classification based on historical reasons, it is not contrary to equal protection clause in Article 14. Application of the Act to cities of Hyderabad and Secunderabad satisfies test of permissible classification. AIR 1964 Andh Pra 373 (377) = (1963) 2 Andh LT 485 (DB).

(3) After the merger of erstwhile Pepsu with Punjab, Section 60 (1) (ccc). Civil P. C. as applicable to areas comprised in Pepsu State cannot be struck down by Article 14 of the Constitution as being discriminatory. The impugned provision governs the territories comprised in the Pepsu State by virtue of the provisions of the S. R. Act on merger. The laws which prevailed in the territory of the Pepsu State have been preserved with regard to the aforesaid territory until the legislature of the present State of Punjab makes a different provision and it cannot be said that there is no reasonable basis for classification. AIR 1958 Punj 326 (327) = ILR (1958) Punj 1445.

Section 120 — Note I

(1) Section 120 confers a power on the appropriate Governments before expiration of one year from the appointed day to make such adaptations and modifications in law and the law with such adaptations and modifications will prevail till the competent legislature or authority amends the law. AIR 1957 Andh Pra 123 (127) = ILR (1957) Andh Pra 229 (DB). (Telangana with Hyderabad forming part of Andhra Pradesh — Income-tax Appellate Tribunal at Hyderabad — Writ of mandamus — Court-fee — Necessary adaptations and modifications to Hyderabad Court-fees Act not made — Hyderabad Court-fees Act applies and not Andhra Court-fees and Suits Valuation Act.)

(2) The scheme of States Reorganisation Act makes the laws applicable to new areas until superseded, amended or altered by appropriate legislature in new States. The Punjab General Sales Tax Act has been amended in 1967 in each of the new States in relation to the area of that State with retrospective effect and this is within competence of new State. **AIR 1970 SC 1742 (1749) = (1969) 2 SCR 544.**

Section 120 — Note 1 (contd.)

(3) The adaptation made in Mysore General Clauses Act, 1899 by virtue of provisions of States Reorganisation Act, 1956 defined 'Madras Area' to mean territory specified in S. 7 (1) (d) of that Act that would comprise only territory of South Kanara district with exception of specified areas. **AIR 1971 SC 1325 (1328) = (1971) 2 SCC 255.** ((1968) 13 Law Rep 327 (Mys) **Reversed.)**

(4) Any adaptation of law made by way of alteration or amendment does not alter the law in such a way as to change constitution or character of statutorily created body like a Municipality. All that the State Government is competent to do under Section 120 is to make such adaptations in existing law of the territories that might have come into new State as would facilitate its application to the new administrative set up, if any. (1965) 3 Law Rep 589 (592, 593) (Mys).

(5) Notifications having force of law would be law within meaning of that word in Section 120. In view of Section 88 of the Bombay Reorganisation Act, the position has continued to remain as it was prior to coming into force of that Act. A mere Government resolution not purporting to be a notification and not published in official gazette cannot be considered for ascertaining jurisdiction of commissioners for Workmen's Compensation Act. 1971 Lab IC 912 (913, 914) = 1971 Mah LJ 468 (DB).

(6) Licences could not be considered as "law" within the meaning of that expression in Section 120. The Adaptation of Laws Order, 1956 could not touch them and they remained intact. 1963 Mys LJ (Supp) 210 (217, 218) (DB). (Commission agents obtaining licences for year 1956-57 — Not liable to pay tax under Section 14-A of the Madras General Sales Tax Act in respect of transactions of principals who became non-resident due to reorganisation of States — Not applicable.)

(7) Form V is part of the Rules framed and is 'Law' as contemplated in Section 120 of the Act. **(1967) 19 STC 215 (220) (SC).**

(8) S. 119 when read with Ss. 120 and 121 shows that the intention of legislature was to extend all those laws mutatis mutandis to the territories which went to a new State as a result of reorganisation. The purpose of Sections 119 to 121 in relation to rule 4 (b) of the All India Services (Discipline and Appeal) Rules, 1955 was to provide remedies in the matter of enquiries against delinquent. 1965 Pun LR (Supp) 358 = ILR (1966) 1 Punj 668 (675, 676).

(9) The rules made by the High Court at Nagpur under Section 122, Civil P. C. and which were in force in the former State of Madhya Pradesh as it existed before reorganisation on 1-11-1956, since they have not been adapted under Section 120. S. R. Act, for the other territories of the corresponding new State are not operative and cannot regulate the procedure of the Civil Court in the territories of the former State of Madhya Bharat. AIR 1960 Madh Pra 130 (131).

(10) Section 120 does not mean that once an amendment has been made to a particular section of an Act, the Act ceases to have any force of law, Every section in an Act is a separate enactment and can be amende whole or in part by the Legislature. No specific provision for this purpose is necessary. The provision in Section 120 was for a limited purpose of giving force to the adaptations which had become necessary under the changed circumstances. Enactments which have been adapted or which have not been adapted continue to have legal force after the reorganisation of States. AIR 1959 Madh Pra 353 (356) (DB).

(11) The power conferred by Section 120 is not a power to introduce new laws into any portion of the State. A power to adapt laws in order to facilitate their application cannot possibly be construed as embracing a power to widen the territorial ambit of any legislation, primary or delegated, obtaining in the Malabar District or in the Travancore-Cochin portion of the Kerala State. This section will not empower the Government of Kerala to introduce a law in force in the Travancore-Cochin portion of the Kerala State into the Malabar District or vice versa. AIR 1958 Ker 96 (97, 98). (Hence the notification of the Kerala Government dated 14-6-1957 is clearly unsustainable and has to be quashed.)

(12) Under Sections 119 and 120, Madras Marumakkattayam Act of 1932 will continue to have operation in territories which have been taken from composite State of Madras and added to Kerala State subject to such adaptations and modifications as may be made by Kerala Legislature in relation to such territories. The modifications made by Kerala Legislature to Madras Act can have effect only in relation to territories which have come within its legislative control. AIR 1972 Mad 10 (13) = (1971) 2 Mad LJ 220.

(13) Sections 119 and 120 have conferred power not only upon State Legislature to alter laws but also on any other authority. So far as the rules in regard to the process-fee are concerned it is the High Court that is the competent authority to make, alter or add to any of the rules, existing prior to the reorganisation of the States. AIR 1959 Andh Pra 279 (279) (DB).

(14) There is no distinction between Article 372 (3) (b) of the Constitution and Section 120 of the S. R. Act seeing that it is the exercise of legislative power in the one case by the President and in the other by the Government of a State, alike under the authority of Parliament. The law as adapted or modified occupies the field for the purpose of future amendments equally effectively in both cases. The absence of emphasis on the law as adapted or modified in connection with the subsequent amendments in Section 120 of the S. R. Act does not therefore seem to matter. **AIR 1959 Ker 182 (186) (FB).**

(15) As the amendment of the Schedule of the Small Cause Courts Act was effected by State Legislature by way of adaptation pursuant to power derived from Section 120, the relevant clause must be deemed to have been made under States Reorganisation Act and therefore in view of Section 127 of S. R. Act must take precedence over provisions of Civil P. C. AIR 1963 Andh Pra 65 (67) = (1962) 1 Andh WR 154 (DB). (Provision in Order 18, Rule 15 does not apply to trial of suits in Small Cause Court in Hyderabad City

121. Power to construe laws.—Notwithstanding that no provision or insufficient provision has been made under section 120 for the adaptation of a law made before the appointed day, any Court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to any State *[or Union territory] formed or territorially altered by the provisions of Part II, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the Court, tribunal or authority.

[*] Inserted by 1 A.L.O., 1956 (1-11-1956).

Section 120 — Note 1 (contd.)

— Small Cause Judge cannot act on evidence recorded by predecessor.)

(16) Territory in Madras State, where appeal was pending before reorganisation of States, transferred to State of Mysore — Madras Civil Court Act continued to be in force therein in view of Section 119 — Ascertainment of corresponding appellate court is by reference to Mysore Civil Courts Act — Notification issued on 30-10-1957 under Section 120 creating a separate court for K, held. did not operate retrospectively so as to affect proceedings transferred under Section 125. (1963) 2 Mys LJ 456 (458).

(17) Sections 119 and 120 have no relevancy whatsoever to the question as to whether an appeal would be under Cl. 15 of the Letters Patent against a judgment of a Judge of the High Court of Andhra Pradesh. They only save the operation of existing laws until such laws are adapted, modified or repealed by the competent Legislature. AIR 1961 Andh Pra 390 (392) (DB).

(18) The combined effect of Sections 119 to 121 is that the territorial changes effected by Part II did not affect law obtaining in different areas forming part of a new State or a State with extended jurisdiction. The laws prevailing in different parts continued to govern those parts till appropriate Government made such adaptations and modification of the law or the Parliament or competent authority altered, repealed or amended any such law. (1958) 1 Andh WR 116 (120, 121, 123, 124) = ILR (1958) Andh Pra 106 (DB). (Appellant had a vested right to file a second appeal both on a question of fact as well as on a question of law to the High Court of A. P. which is in effect the forum substituted in the place of erstwhile Hyderabad High Court.)

(19) In G. O. Ms. No. 2954 (Home Dept.) dated 13-11-1957 passed by Government under Section 120 it has been provided that pleaders who belonged to former State of Travancore-Cochin should be treated on same footing as the similar class of pleaders of Pudukottai State. The order merely regulates their rights as pleaders in Madras State — Mere recognition as first grade pleader by virtue of notification does not qualify a person to be recognised as Advocate of Madras High Court. AIR 1964 Mad 390 (393) = (1963) 2 Mad LJ 420 (DB).

(20) On notification issuing under Sec. 122, existing law itself was to have effect in a different manner. The Hyderabad Public Servants (Tribunal of Enquiry) Act. 1950 after notification applied in accordance with notification and pro tanto was adopted thereby. Adaptation of Hyderabad Act under Section 120 was not a condition precedent to issuance of notification. **AIR 1964 SC 777 (779) = (1964) 1 SCR 671.**

(21) Neither under Section 120 of the S. R. Act read with para 6 (1) of the Mysore Adaptation of Laws Order nor under Sec. 121 of that Act would it be competent or permissible to construe references to legislative Assembly of Hyderabad State in Hyderabad Legislative Assembly (Prevention of Disqualification) Act as references to Legislative Assembly of reorganised State of Mysore. AIR 1963 Mys 81 (106) = 39 Mys LJ 107 (DB).

(22) No adaptation made under Sec. 120 — Even then, Section 121 can be relied on for purpose of making such adaptations as could have been made under Section 120. AIR 1967 Ker 240 (243) = 1967 Ker LT 39 (DB). (AIR 1957 Andh Pra 123, **Dissent from.**)

(23) Integration of former Ajmer State in State of Rajasthan — State Government of Rajasthan is appropriate Government for purpose of Section 120 for integrated Ajmer State. AIR 1962 Raj 218 (220) = 1962 Raj LW 301 (DB).

Section 121 — Note I

(1) If the appropriate Government exercises its powers and makes suitable orders under Section 120 and if a lacuna is found in such orders, the Courts, for the purpose of facilitating the application of the law without affecting the substance may, under Section 121. construe the law in such manner as is necessary to facilitate the application of the laws in relation to the territory altered by the S. R. Act. Where no order is made under Section 120, there is no scope for the Courts to construe the provision of an Act in the manner provided by Section 121. AIR 1957 Andh Pra 123 (127, 128).

(2) No adaptation made under Section 120 — Even then provisions under Section 121 can be relied on for purpose of making such adaptations as could have been made under Section 120. AIR 1967 Kerala 240 (243) = 1967 Ker LT 39 (DB). (AIR 1957 Andh Pra 123, **Dissent from.**)

(3) It is clear from Sections 119 to 121 that intention of legislature was to keep intact laws that prevailed in merged territories. Section 119 particularly when read with Sections 120 and 121 shows that the intention of Legislature was to extend all those laws mutatis mutandis to territories which went to new State as a result of reorganisation. 1965 Pun LR (Supp) 358 (363) = ILR (1966) 1 Punj 668.

122. Power to name authorities, etc., for exercising statutory functions.—The Central Government, as respects any *[Union territory,] and the State Government as respects any new State or any transferred territory, may by notification in the Official Gazette, specify the authority, officer or person who, as from the appointed day, shall be competent to exercise such functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly.

[*] Substituted for "Part C State" by 1 A.L.O., 1956 (1-11-1956).

123. Legal proceedings.—Where, immediately before the appointed day, the Union or an existing State is a party to any legal proceedings with respect to any property, rights or liabilities subject to apportionment under this Act, the successor State which succeeds to, or acquires a share in, that property or those rights or liabilities by virtue of any provision of this Act shall be deemed to be substituted for the Union or the existing State as a party to those proceedings, or added as a party thereto, as the case may be, and the proceedings may continue accordingly.

124. Right of pleaders to practise in certain Courts.—Any person who, immediately before the appointed day, is enrolled as a pleader entitled to practise in any subordinate Courts in an existing State which is affected by the provisions of Part II shall, for a period of six months from that day, continue to be entitled to practise in those Courts, notwithstanding that the whole or any part of the territories within the jurisdiction of those Courts has been transferred to another State.

Note.—Right to practise is now governed by the provisions of the Advocates Act, 1961.

Section 121 — Note 1 (contd.)

(4) Word "The Act" in Section 18 of the Madras General Clauses Act must be read to include Kerala Panchayats Act, 1960 — Court has been given power under Sec. 121 of the States Reorganisation Act to construe Section 18 to facilitate its application in relation to any State formed or territory altered by S. R. Act. AIR 1967 Kerala 240 (243) = 1967 Ker LT 39 (DB).

(5) Inter-State routes, between States of Madhya Pradesh and Bombay — Before reorganisation of States routes falling within State of old Madhya Pradesh — Permits granted by R. T. A. of old M. P. — Reciprocal agreement between Bombay and M. P. States after reorganisation of States — Routes allotted to new M. P. — Applications for renewal should be made to R. T. A. Madhya Pradesh. AIR 1962 Madh Pra 59 (60, 61) = 1961 Jab LJ 1354 (DB).

(6) Hyderabad Legislative Assembly (Prevention of Disqualification) Act (18 of 1955) — Not operative after reorganisation of States — Not available for removing disqualifications of members for being chosen to Legislative Assembly of reorganised States of Mysore. AIR 1963 Mys 81 (107) = 39 Mys LJ 107 (DB).

(7) Magistrate taking cognisance of case — Subsequent repeal of notification by State Government appointing him owing to States reorganisation — He can continue proceedings whether the Government of new State has issued a fresh order of appointment or not — He will be deemed to have been appointed to the post by the Government of the new State. 1957 Nag LJ 508 (511).

(8) Appeal from Kollegal taluq transferred to District Judge at Mysore — Powers of that Court to transfer it to Civil Judge at Mysore for disposal — Section 13 of Madras Act applies — Transfer held valid. AIR 1966 Mys 49 (52, 53) = (1965) 2 Law Rep 234.

Section 122 — Note 1

(1) States Reorganisation Act applied even if it was inconsistent with anything in Hyderabad Public Servants (Tribunal of Enquiry) Act, 1950. By reason of Section 127 and power granted by Section 122, it was competent to Government of Andhra Pradesh to name an Authority under the Hyderabad Act even though that Authority might not have been qualified under the latter Act. **AIR 1964 SC 777 (779) = (1964) 1 SCR 671.** ((1961) 2 Andh WR 4 Affirmed.)

(2) Mysore Commissioner for Religious and Charitable Endowments appointed under Section 80 of the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951) (As amended by Madras Act (XXVII of 1964)) had competence to demand contribution under Section 76 (1) in view of Notification issued by Mysore Government under Section 122 of S. R. Act. (1967) 12 Law Rep 195 (204) (DB).

(3) A decision of the Deputy Commissioner terminating the services of the Patels under the M. P. Land Revenue Code would constitute a revenue case and in view of the notification of the Bombay Government issued under Section 122 of the S. R. Act, appeal against that decision will lie to the Bombay Revenue Tribunal. **AIR 1959 Bom 108 (111, 112) (FB). (1957 Nag LJ 161 (Rev) (FB). Overruled.).**

125. Provisions as to certain pending proceedings.—(1) Every proceeding pending immediately before the appointed day before a Court (other than a High Court), tribunal, authority or officer in any area which on that day falls within a State shall, if it is a proceeding relating exclusively to any part of the territories which as from that day are the territories of another State *[or form a Union territory,] stand transferred to the corresponding Court, tribunal, authority or officer in the other State or the Union territory, as the case may be.

(2) If any question arises to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court having jurisdiction in respect of the area in which the Court, tribunal, authority or officer before which or whom such proceeding is pending on the appointed day, is functioning and the decision of that High Court shall be final.

(3) In this section—

(a) "proceeding" includes any suit, case or appeal; and

(b) "corresponding Court, tribunal, authority or officer" in a State *[or Union territory] means—

(i) the Court, tribunal, authority or officer in that State *[or Union territory] in which, or before whom, the proceeding would have

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Section 125 — Note I

(1) Section 125 directs transfer of a case to another territory if the proceeding relates exclusively to any part of the territory of the other State. Plaintiffs, residents of C in Rajasthan, instituted a suit at B in Rajasthan against defendant resident of S. which was transferred to M. P. under the S. R. Act, for recovery of price of goods despatched from C. Under the agreement, the sale proceeds were to be remitted by defendant to plaintiffs at C. According to the decree obtained in the suit, the defendant was directed to return the goods to the plaintiffs residing at C. The execution proceedings were pending in the Court at B when the Act came into force: **Held,** that the Court B had jurisdiction to entertain and decide the execution proceedings. AIR 1958 Raj 60 (61) (DB).

(2) Disciplinary proceedings pending against an officer when the Act comes into force are not proceedings which related exclusively to that part of the old State which is transferred to the new State and therefore S. 125 cannot apply to such a case at all. Further it is also doubtful if the section was intended to apply to mere disciplinary proceedings by the State against the officers, so long of course as the officers continue to be in the service of that State. AIR 1957 Mad 769 (771) = ILR (1957) Mad 1010 (DB).

(3) Dismissal of public servant by Government of Andhra Pradesh on report of enquiry into his misconduct — Charges against servant enquired into by Tribunal relating to period prior to formation of State of Andhra Pradesh — **Held,** that police officer who conducted enquiry into charges was officer within Section 125, and hence subsequent proceedings held by tribunal on strength of his report were in accordance with A (Obiter). ILR (1965) Andh Pra 482 (505, 506) (DB).

(4) Where the Bombay Revenue Tribunal by its revisional order dated 10-9-1956 set aside the order of the Prant Officer with respect to land situated in Bijapur district which became the part of the New State of Mysore as from 1-11-1956 consequent on the reorganisation of the States. all the proceedings pending before the Bombay Tribunal stood transferred to the corresponding tribunal or authority in the new State of Mysore by virtue of Section 125. AIR 1959 Mys 108 (110) (DB).

(5) "Corresponding Court" — Ascertainment — Territory in Madras State where appeal was pending before reorganisation of States transferred to State of Mysore — Madras Civil Courts Act continued to be in force there in view of Section 119 — Ascertainment of corresponding appellate Court is by reference to Mys. Civil Courts Act — Notification issued on 30-10-1957 under Section 120 creating a separate Court at K, held, did not operate retrospectively so as to affect proceedings transferred under Section 125. (1963) 2 Mys LJ 456 (458).

(6) Transfer under Section 125 takes effect by force of the Statute itself and not by virtue of any order of transfer passed by any Court. If the conditions set out in Sub-section (1) are satisfied, the proceeding stands automatically transferred. Should any question arise as to whether those conditions are satisfied in a particular case. the only Court which has jurisdiction to decide that question is the High Court within the territory of whose jurisdiction the particular subordinate Court is functioning. AIR 1959 Mys 158 (160) = 1959 Cri LJ 746. (The Subordinate Court has no jurisdiction whatever in the matter.)

[See also AIR 1965 Madh Pra 43 (46, 47) = 1964 Jab LJ 226 (DB). (It must be taken that the Court, etc., to which or to whom the proceedings have been transmitted as a result of Section 125 (1), has the jurisdiction to entertain and deal with the proceedings — Proceedings held

lain if the proceeding had been instituted after the appointed day, or

(ii) in case of doubt, such Court, tribunal, authority or officer in that State *[or Union territory] as may be determined after the appointed day by the Government of that State *[or the Central Government, as the case may be], or before the appointed day by the Government of the corresponding State, to be the corresponding Court, tribunal, authority or officer.

[*] Inserted by 1 A.L.O., 1956 (1-11-1956).

126. **Declaration of certain ancient monuments, etc., in Part C States to be of national importance.**—[Repealed by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (XXIV of 1958), Section 39 (15-10-1959).]

127. **Effect of the provisions of the Act inconsistent with other laws.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

128. **Power to remove difficulties.**—If any difficulty arises in giving effect to the provisions of this Act, the President may by order do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty.*

[*] The following are the States Reorganisation (Removal of Difficulties) Orders issued from time to time:—

No. 1.—S.R.O. 2474, Gaz. of Ind., 1956, Extra., Pt. II-Sec. 3, p. 2149.

No. 2.—S.R.O. 3179, dated 28-12-1956, ibid, p. 2723.

Section 125 — Note 1 (contd.)

automatically stood transferred under M. P. Industrial Relations Act — Remedy for aggrieved party — Stay of proceeding before Industrial Court is discretionary.)]

(7) An appeal against the order of the Munsif of Sironj was filed in the Court of the District Judge of Kota. The appeal which was transferred by the District Judge on 22-5-1956 to the Civil Judge of Bundi for disposal was pending in the Court of the Civil Judge on 1-11-1956 when Sironj was transferred from Rajasthan to Madhya Pradesh. The Civil Judge dismissed the appeal on 16-1-1957. It was held that the decree passed by the Civil Judge was without jurisdiction because under Section 125 the appeal stood transferred to the Court of the District Judge of Bhilsa in M. P. AIR 1961 Raj 287 (288).

(8) Appeal from Kollegal Taluk transferred to District Court at Mysore — Powers of that Court to transfer it to Civil Judge at Mysore for disposal — Section 13 of Madras Civil Courts Act applies — Transfer held valid. AIR 1966 Mys 49 (52, 53) = (1965) 2 Law Rep 234.

(9) Appeal from Kollegal taluq pending before District Judge at Coimbatore — Statutory transfer to corresponding Court — Court of District Judge, Mysore Division. at Mysore is District Court for Kollegal Taluk — Appeal stands statutorily transferred to District Court at Mysore. AIR 1966 Mys 49 (52) = (1965) 2 Law Rep 234.

(10) Appeal to Charity Commissioner under Section 70 of Bombay Public Trusts Act before reorganisation of States — Even after reorganisation he has power to hear such appeal from 4 districts transferred to Mysore State — It is not necessary that corresponding officer or tribunal should actually be within Mysore State. Section 125 means that tribunal or officer must be tribunal or officer of Mysore State. 38 Mys LJ 258 (263, 264) = ILR (1959) Mys 341 (DB).

(11) Integration of Ajmer State in State of Rajasthan — Notification issued prior to appointed day continues to be valid even thereafter by virtue of Section 125 of S. R. Act. AIR 1962 Raj 218 (219) = 1962 Raj LW 301 (DB).

Section 127 — Note 1

(1) Previous approval of Central Government, as contemplated by proviso to Sec. 115 (7) must not be presumed but must be either categorically given or that approval becomes unmistakably apparent from correspondence between State Governments and Central, Government. **AIR 1972 SC 1640 (1645, 1646) = (1972) 1 SCR 896 = 1972 Lab IC 887.** (Punjab Police Clerical Service (State Service Class III) Rules, 1960, could not apply to facts of the case — Only those directions which the Central Government could give under Section 117 read with Section 127 would govern inter se seniority of parties in this case.)

(2) The Act applied even if it was inconsistent with Hyderabad Public Servants (Tri-

No. 3.—S.R.O. 3190, dated 31-12-1956, ibid, p. 2773.

No. 4 of 1957.—S.R.O. 1000, dated 28-3-1957, Gaz. of Ind., 1957, Extra., Pt. II-Sec. 3, p. 1237.

No. 5 of 1957.—S.R.O. 1538, dated 8-5-1957, Gaz. of Ind., 1957, Pt. II-Sec. 3, page 1040.

No. 6 of 1957.—S.R.O. 2013, dated 22-6-1957, ibid, p. 1272.

No. 7 of 1957.—S.R.O. 189, dated 6-1-1958, Gaz. of Ind., 1958, Pt. II-Sec. 3, page 128.

No. 8.—S.O. 1419, dated 27-6-1959, Gaz. of Ind., 1959, Pt. II-Sec. 3 (ii), page 1449.

No. 9 of 1960,—S.O. 1074, Dated 27-4-1960, Gaz. of Ind., 1960, Pt. II-Sec. 3 (ii), p. 281.

No. 10.—S.O. 2638, Dated 13-10-1961, Gaz. of Ind., 1961, Pt. II-Sec. 3 (ii), p. 2882.

No. 11.—S.O. 417, Dated 25-1-1964, Gaz. of Ind., 1964, Pt. II, S. 3 (ii), p. 493.

129. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules* to give effect to the provisions of this Act.

(2) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

[*] For the Reorganised States (Scheduled Castes and Scheduled Tribes) (Determination of Population) Rules, 1956 see Notfn. No. 18/18/56-Pub. II-(B) dated 23-10-1956 Published in Gaz. Ind., 1956, Extra., Pt. I-sec. 1, page 944.

130. Repeal of Act 49 of 1951.—(1) The Government of Part C State Act, 1951, is repealed with effect from the appointed day.

(2) The said repeal shall not affect any laws made by the Legislature of a Part C State by virtue of any power conferred on that Legislature by the Act so repealed, and all such laws in force immediately before the appointed day shall continue in force subject to such adaptations and modifications as may be made therein under section 120, until altered, repealed or amended by a competent Legislature or other competent authority.

Section 127 — Note 1 (contd.)

bunal of Enquiry) Act, 1950. By reason of Section 127 and the power granted by Section 122 of the Act it was competent to Government of Andhra Pradesh to name an Authority under Hyderabad Act even though that Authority might not have been qualified under the latter Act. **AIR 1964 SC 777 (779) = (1964) 1 SCR 671.**

(3) As amendment to the schedule of Small Cause Courts Act was effected by State legislature by way of adaptation pursuant to the power derived by Section 120, the relevant clause must be deemed to have been made under S. R. Act and therefore in view of Section 127 of S. R. Act must take precedence over provisions of Civil P. C. AIR 1963 Andh Pra 65 (67) = (1962) 1 Andh WR 154 (DB). (Order 18, R. 15 and Order 50 Civil P. C. do not apply to trials of suits in small Cause Courts in Hyderabad City.)

Section 129 — Note 1

(1) It is only the Rules framed under sub-sec. (1) of Section 129 which are required to be laid before both the Houses of Parliament — As Punjab Services Integration Rules, 1957 were not made under sub-s. (1), they need not be laid before both or either of the Houses of Parliament. ILR (1970) 2 Punj 1 (11, 12).

(2) Section 129 confers exclusive power on Central Government to frame rules under the Act but the said provision by itself does not take away from the Governor of the State his normal authority to make rules regarding services under Art. 309 of the Constitution. ILR (1970) 2 Punjab 1 (12).

(3) Punjab Services Integration Rules. 1957 are valid and are not unconstitutional or ultra vires Section 129 or Section 115 (5) of S. R. Act. ILR (1970) 2 Punj 1 (19) ** AIR 1969 Punj 34 (40, 41) = ILR (1968) 1 Punj 204.

THE FIRST SCHEDULE

[See section 28 (3)]

Every sitting member representing a constituency specified in the first column of the Table below in the Legislative Assembly of the existing State specified against it in the second column shall, as from the appointed day, be deemed to have been elected to the Legislative Assembly of the State specified against that constituency in the third column and cease to be a member of the Legislative Assembly of which he was a member immediately before that day:

TABLE

Name of Constituency (1)	Existing State (2)	State to which transferred (3)
1. Palanpur-Abu-Vadagam-Danta	Bombay	Bombay
2. Chandgad	Bombay	Bombay
3. Halsur	Hyderabad	Bombay
4. Udgir	Hyderabad	Bombay
5. Kodangal	Hyderabad	Andhra Pradesh
6. Thandur-Seram	Hyderabad	Mysore
7. Bidar	Hyderabad	Mysore
8. Zahirabad	Hyderabad	Andhra Pradesh
9. Mudhol	Hyderabad	Andhra Pradesh
10. Deglur	Hyderabad	Bombay
11. Kinwat	Hyderabad	Bombay
12. Asifabad	Hyderabad	Andhra Pradesh
13. Bhanpura	Madhya Bharat	Madhya Pradesh
14. Panemangalore	Madras	Mysore

THE SECOND SCHEDULE

[See section 35 (2)]

Modifications in the Delimitation of Council Constituencies (Madras) Order, 1951

In the Table—

(a) for the entry relating to the Madras (Graduates) Constituency substitute:— "Madras† (Graduates) Entire State *[6];"

(b) for the entry in the second column relating to the Madras† (Teachers) Constituency, substitute "Entire State";

(c) in the third column, for the figure "3" wherever it occurs substitute "4"; and

(d) omit the entry relating to the West Coast (Local Authorities) Constituency.

[*] Substituted for "4" by the States Reorganisation (Amendment) Act, 1956 (LXVII of 1956), Section 3 (with retrospective effect from 1-11-1956).

[†] State now known as Tamil Nadu—See Act 53 of 1968.

THE THIRD SCHEDULE

(See section 40)

Allocation of Seats in the House of the People and Assignment of Seats to State Legislative Assemblies.

The number of seats in the House of the People to be allotted to each of the States *[and Union territories] and the number of seats to be assigned to

Legislative Assembly of each †[State other than Jammu and Kashmir] shall be as shown in the following Table:—

TABLE

‡[*]	Number of seats in the House of the People	Number of seats in the Legislative Assembly
1. Andhra Pradesh	43	301
2. Assam	12	108
3. Bihar	55	330
4. Bombay	66	396
5. Kerala	18	126
6. Madhya Pradesh	36	288
7. Madras	41	205
8. Mysore	26	208
9. Orissa	20	140
10. Punjab	22	154
11. Rajasthan	22	176
12. Uttar Pradesh	86	430
13. West Bengal	34	238
14. Jammu and Kashmir	6	
15. Delhi	5	
16. Himachal Pradesh	4	
17. Manipur	2	
18. Tripura	2	

[*] Inserted by 1 A.L.O., 1956 (1-11-1956).

[†] Substituted for "Part A State", ibid.

[‡] The word "States" was omitted, ibid.

Note.—This table is now of historical interest only. The position has completely changed by subsequent Acts.

THE FOURTH SCHEDULE

[See section 74 (1)]

I. Modified Form of Section 3 of the Union Duties of Excise Distribution Act, 1953.

3. Distribution of a part of the Union duties of excise among the States.—(1) During the first half of the financial year commencing on the 1st day of April, 1956, there shall be paid out of the Consolidated Fund of India to each of the States specified in column 1 of the Table below such percentage of the distributable Union duties of excise for the half-year as is set out against it in column 2:

TABLE

State	Percentage
Andhra	5.92
Assam	2.61
Bihar	11.60
Bombay	10.37
Hyderabad	5.39
Madhya Bharat	2.29
Madhya Pradesh	6.13
Madras	10.30
Mysore	2.84
Orissa	4.22
Patiala and East Punjab States Union	1.00
Punjab	3.66
Rajasthan	4.41
Saurashtra	1.19
Travancore-Cochin	2.68
Uttar Pradesh	18.23
West Bengal	7.16

(2) During the second half of the said financial year, there shall be paid out of the Consolidated Fund of India to each of the States specified in column 1

of the Table below such percentage of the distributable Union duties of excise for the half-year as is set out against it in column 2 and such additional percentage, if any, of the said duties as is set out, against it in column 3:

State	Percentage	Additional Pencentage
Andhra Pradesh	9.03	...
Assam	2.61	...
Bihar	11.60	...
Bombay	12.57	1.19
Kerala	1.49	2.42
Madhya Pradesh	6.25	...
Madras	8.39	0.26
Mysore	2.90	2.62
Orissa	4.22	...
Punjab	4.66	...
Rajasthan	4.40	...
Uttar Pradesh	18.23	...
West Bengal	7.16	...

(3) For the purposes of this section—

(a) the first half and the second half of the financial year commencing on the 1st day of April, 1956, shall be deemed to be the first seven months and the remaining five months, respectively, of that financial year;

(b) the distributable Union duties of excise for the first half and for the second half of the said financial year shall be deemed to be seven-twelfths and five-twelfths, respectively, of the distributable Union duties of excise for that financial year.

II. Modified Form of Paragraphs 3 and 5 of the Constitution (Distribution of Revenues) Order, 1953.

3. (1) For the purposes of Cl. (2) of Art. 270, the proceeds attributable to Part C States for the first half and *[to Union territories] for the second half, of the financial year commencing on the 1st day of April, 1956, shall be taken to be 2¾ per cent. and 1 per cent., respectively, of so much of the net proceeds of taxes on income for the half-year as does not represent the net proceeds of taxes payable in respect of Union emoluments.

(2) The percentage of the net proceeds of taxes on income, except in so far as those proceeds represent proceeds attributable to Part C States or to taxes payable in respect of Union emoluments, which is to be assigned to Part A States and Part B States (other than the State of Jammu and Kashmir) under clause (2) of Article 270 in the first half of the said financial year shall be 55 per cent.; and the total amount to be so assigned shall be distributed among the said States as follows:

State	Percentage
Andhra	5.49
Assam	2.25
Bihar	9.75
Bombay	17.50
Hyderabad	4.50
Madhya Bharat	1.75
Madhya Pradesh	5.25
Madras	9.56
Mysore	2.45
Orissa	3.50
Patiala and East Punjab States Union	0.75
Punjab	3.25
Rajasthan	3.50
Saurashtra	1.00
Travancore-Cochin	2.50
Uttar Pradesh	15.75
West Bengal	11.25

(3) The percentage of the net proceeds of the taxes on income, except in so far as those proceeds represent proceeds attributable to †[Union territories] or the taxes payable in respect of Union emoluments, which is to be assigned to

‡[States (other than the State of Jammu and Kashmir)] under clause (2) of Article 270 in the second half of the said financial year shall be 55 per cent.; and the total amount to be so assigned shall be distributed among the said States as follows:

State	Percentage	Additional percentage
Andhra Pradesh	8.09	...
Assam	2.25	...
Bihar	9.75	...
Bombay	18.10	1.00
Kerala	1.38	2.26
Madhya Pradesh	5.14	...
Madras	7.79	0.24
Mysore	3.74	2.25
Orissa	3.50	...
Punjab	4.00	...
Rajasthan	3.51	...
Uttar Pradesh	15.75	...
West Bengal	11.25	...

(4) For the purposes of this paragraph—

(a) the first half and the second half of the financial year commencing on the 1st day of April, 1956, shall be deemed to be the first seven months and the remaining five months, respectively, of that financial year;

(b) the net proceeds of taxes on income for the first half and for the second half of the said financial year shall be deemed to be seven-twelfths and five-twelfths, respectively, of the net proceeds of such taxes for that financial year.

5. (1) In accordance with the provisions of clause (1) of Article 275, there shall be charged on the Consolidated Fund of India—

(a) in the first seven months of the said financial year, as grants-in-aid of the revenues of each of the States specified below, the sum specified against it:

(i) For general purposes—

Assam	58.33 lakhs of rupees.
Mysore	23.33 lakhs of rupees.
Orissa	43.75 lakhs of rupees.
Punjab	72.92 lakhs of rupees.
Saurashtra	23.33 lakhs of rupees.
Travancore-Cochin	26.25 lakhs of rupees.
West Bengal	46.67 lakhs of rupees,

(ii) For the expansion of primary education—

Bihar	48.42 lakhs of rupees.
Hyderabad	23.33 lakhs of rupees.
Madhya Bharat	10.50 lakhs of rupees.
Madhya Pradesh	29.17 lakhs of rupees.
Orissa	18.67 lakhs of rupees.
Patiala and East Punjab States Union	5.25 lakhs of rupees.
Punjab	16.33 lakhs of rupees.
Rajasthan	23.33 lakhs of rupees.

(b) in the remaining five months of the said financial year, as grants-in-aid of the revenues of each of the States specified below, the sum specified against it:

(i) For general purposes—

Assam	41.67 lakhs of rupees.
Mysore	16.67 lakhs of rupees.
Orissa	31.25 lakhs of rupees.
Punjab	52.08 lakhs of rupees.
Bombay	16.67 lakhs of rupees.
Kerala	16.93 lakhs of rupees.
Madras	1.82 lakhs of rupees.
West Bengal	33.33 lakhs of rupees.

(ii) For the expansion of primary education—

Bihar	...	...	...	34.58 lakhs of rupees.
Andhra Pradesh	...	...	...	9.62 lakhs of rupees.
Mysore	...	...	...	2.41 lakhs of rupees.
Bombay	...	...	...	12.10 lakhs of rupees.
Madhya Pradesh	...	...	...	20.98 lakhs of rupees.
Orissa	...	...	...	13.33 lakhs of rupees.
Punjab	...	...	...	15.42 lakhs of rupees.
Rajasthan	...	...	...	16.56 lakhs of rupees.

(2) There shall also be charged on the Consolidated Fund of India—

(a) in the first seven months of the said financial year, as grants-in-aid of each of the States of Mysore, Saurashtra and Travancore-Cochin, the sum by which the total of the amounts payable to that State under sub-paragraph (2) of paragraph 3 of this Order and under sub-section (1) of section 3 of the Union Duties of Excise (Distribution) Act, 1953, falls short of 201.25 lakhs of rupees, 160.42 lakhs of rupees and 163.33 lakhs of rupees, respectively; and

(b) in the remaining five months of the said financial year, as grants-in-aid of each of the States of Mysore, Bombay, Kerala and Madras, the sum by which the total of the amounts payable to that State as additional percentages under sub-paragraph (3) of paragraph 3 of this Order and under sub-section (2) of section 3 of the said Act falls short of 143.75 lakhs of rupees, 114.58 lakhs of rupees, 105.38 lakhs of rupees and 11.29 lakhs of rupees, respectively.

(3) Any sum or sums payable under this paragraph shall be in addition to any sum or sums payable to the States under each of the provisos to clause (1) of Article 275.

[*] Inserted by 1 A.L.O., 1956 (1-11-1956).

[†] Substituted for "Part C States", ibid.

[‡] Substituted for "Part A States", ibid.

THE FIFTH SCHEDULE

(See section 86)

Apportionment of Liability in Respect of Pensions.

1. Subject to the adjustments mentioned in paragraph 3, the successor State or each of the successor States shall, in respect of pensions granted before the appointed day by an existing State, pay the pensions drawn in its treasuries.

2. Subject to the said adjustments, the liability in respect of pensions of officers serving in connection with the affairs of an existing State who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions are outstanding immediately before that day, shall be the liability of the successor State, or, if there be two or more successor States, of such one of them as the Central Government may by order specify.

3. In any case where there are two or more successor States, there shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March, 1957 and in respect of each subsequent financial year, the total payments made in all the successor States in respect of the pensions referred to in paragraphs 1 and 2. That total representing the liability of the

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Schedule 5 — Note 1

(1) Petitioner retired in 1939 from service in the then State of M. P. — Reorganisation of States in 1956 and 1960 — Petitioner settled down in Nagpur and drawing pension from Nagpur Treasury even now — Place from where he retired still in State of new M. P. — Both Maharashtra and M. P. State Governments granted certain increases in pensions of pensioners on different occasions — State of Bombay which is successor State to existing State of M. P. would not be liable to the increase in pension granted by present State of M. P. — Further no claim against State of M. P. can be granted even after amendment of Article 226. AIR 1970 Bom 117 (120, 122) = 72 Bom LR 258 (DB).

existing State in respect of pensions shall be apportioned between the successor States in the population ratio and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or States paying less.

4. (1) The liability in respect of the pension of any officer serving immediately before the appointed day in connection with the affairs of an existing State and retiring on or after that day, shall be that of the successor State granting the pension; but the portion of the pension attributable to the service of any such officer before the appointed day in connection with the affairs of that existing State shall, if there be two or more successor States, be allocated between them in the population ratio, and the Government granting the pension shall be entitled to receive from each of the other successor States its share of this liability.

(2) If any such officer was serving after the appointed day in connection with the affairs of more than one successor State, the successor State or States other than the one granting the pension shall reimburse to the Government by which the pension is granted an amount which bears to the portion of the pension attributable to his service after the appointed day the same ratio as the period of his qualifying service after the appointed day under that successor State bears to the total qualifying service of such officer after the appointed day reckoned for the purposes of pension.

(3) In reckoning the said total qualifying service, any service of such officer before the appointed day in connection with the affairs of the Union under the administrative control of the Lieutenant-Governor or Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh shall be added as if the said service had been service after the appointed day in connection with the affairs of the successor State to that existing State.

5. Any reference in this Schedule to a pension shall be construed as including a reference to the commuted value of the pension.

THE SIXTH SCHEDULE

(See section 113)

(1) Engineering Colleges and Schools of Technology.
(2) Medical Colleges.
(3) Agricultural Colleges.
(4) Veterinary Colleges.
(5) Government hospitals providing for special treatment, such as,
  (i) tuberculosis hospitals and sanatoria;
  (ii) cancer hospitals,
  (iii) radium institutes,
  (iv) mental hospitals,
  (v) leprosy hospitals and sanatoria, and
  (vi) hospitals providing for Unani or Ayurvedic treatment,
(6) Research institutes, such as,—
  (i) irrigation research institutes,
  (ii) Government analysts' departments, and
  (iii) serum institutes.
(7) Central Jails.
(8) Borstal Schools, Reformatory Schools and Certified Schools.
(9) Police Training Colleges and Institutes.
(10) Fire Services Training Schools.
(11) Hotels for Scheduled Castes, Scheduled Tribes and Backward Classes.
(12) Photo Registry Offices.
(13) Central Records Offices.
(14) Forest Schools.
(15) Finger Print Bureaux.

[THE INDIAN] STATISTICAL INSTITUTE ACT, 1959
(Act LVII of 1959)

[The text of the Act printed here is as on 31.5.1973.]

CONTENTS

SECTIONS

1. Short title and commencement.
2. Definitions.
3. Declaration of the Indian Statistical Institute as an institution of national importance.
4. Grant of degrees and diplomas by Institute.
5. Grants, loans, etc., by Central Government to the Institute.
6. Audit of accounts of the Institute.
7. Prior approval of Central Government necessary for certain action by Institute.
8. Constitution of Committees by Central Government for preparing programme of work by the Institute, etc.
9. Review of work done, inspection of assets, etc.
10. Institute to afford facilities to Committees.
11. Power to issue directions to Institute.
12. Power of Central Government to assume functions or control.

STATEMENT OF OBJECTS AND REASONS

"The Indlan Statistical Institute in Calcutta conducts investigation studies in the science of statistics and its application in various fields; it also provides facilities for practical and professional training in statistics.

2. There has been steady expansion in the activities of the Institute whlch now include—

(1) the work of designing the annual rounds of the National Sample Survey and the Sample Survey of Manufacturing Industries, processing, tabulating and analysing the field data and writing and printing the various N. S. S. and S.S.M.I. reports;

(2) the maintenance of an Operational Research Unit on Planning at Calcutta, Statistical Quality Control Units at Bangalore, Bombay, Delhi, and Calcutta and other Units for studies in Regional Planning, Biometry and Psychometry;

(3) advanced research in theoretical statistics and the application of statistical methods to problems in various fields including demography, economics, planning, agriculture and industry;

(4) the training of statisticians deputed by the Central and State Governments; and

(5) the running of an International Statistical Education Centre.

3. In view of the importance of the functions of the Institute and the large sums of money received by it from the Government, it is considered necessary that the Institute should be declared to be an institution of national importance under Entry 64 in List I of the Seventh Schedule to the Constitution. The Bill makes such a declaration and provides for the requisite financial assistance to be given to the Institute and for suitable powers of control being exercised. The Institute is also being empowered to grant degrees and diplomas in Statistics" — Gaz. of Ind., 1959, Extra., Pt. II-Sec. 2, p. 1232.

[THE INDIAN] STATISTICAL INSTITUTE ACT, 1959
(Act LVII of 1959)*

[24th December, 1959.]

An Act to declare the institution known as the Indian Statistical Institute having at present its registered office in Calcutta to be an institution of national importance and to provide for certain matters connected therewith.

Be it enacted by Parliament in the Tenth Year of the Republic of India as follows :—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1959, Extra, Pt. II. Sec. 2, page 1232.

1. Short title and commencement. — (1) This Act may be called THE INDIAN STATISTICAL INSTITUTE ACT, 1959.

(2) It shall come into force on such date* as the Central Government may, by notification in the Official Gazette, appoint.

[*] The Act came into force on 1-4-1960—See S. O. 584, D/- 2.3.1960, Gaz. of Ind., 1960, Pt. II-Sec. 3 (ii), p. 905.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Institute" means the Indian Statistical Institute registered under the Societies Registration Act, 1860,

(b) "memorandum" means the memorandum of association of the Institute filed with the Registrar of Joint-Stock Companies under the Societies Registration Act, 1860;

(c) "rules and regulations" includes any rule or regulation (by whatever name called) which the Institute is competent to make in the exercise of the powers conferred on it under the Societies Registration Act, 1860, but shall not include any bye-laws or standing orders made under the rules and regulations for the conduct of its day-to-day administration.

3. Declaration of the Indian Statistical Institute as an institution of national importance. — Whereas the objects of the institution known as the Indian Statistical Institute are such as to make it an institution of national importance, it is hereby declared* that the Indian Statistical Institute is an institution of national importance.

[*] See the Constitution of India, Sch. VII List 1, Entry 64.

4. Grant of degrees and diplomas by Institute.—Notwithstanding anything contained in the University Grants Commission Act, 1956, or in any other law for the time being in force, the Institute may hold such examinations and grant such degrees and diplomas in statistics as may be determined by the Institute from time to time.

5. Grants, loans, etc., by Central Government to the Institute.—For the purpose of enabling the Institute to discharge efficiently its functions including research, education, training, project activities and statistical work relating to planning for national development, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Institute in each financial year such sums of money as that Government considers necessary by way of grant, loan or otherwise.

6. Audit of accounts of the Institute. — (1) The accounts of the Institute shall be audited by auditors duly qualified to act as auditors of companies under the Companies Act, 1956, and the Institute shall appoint such auditors as the Central Government may, after consultation with the Comptroller and Auditor-General of India and the Institute, select.

(2) The Central Government may issue such directions to the auditors in the performance of their duties as it thinks fit.

(3) Every such auditor in the performance of his duties shall have at all reasonable times access to the registers, books of account, records and other documents of the Institute.

(4) The auditors shall submit their report to the Institute and shall all forward a copy thereof to the Central Government for its information.

7. Prior approval of Central Government necessary for certain action by Institute.—Notwithstanding anything contained in the Societies Registration Act 1860, or in the memorandum or rules and regulations, the Institute shall not, except with the previous approval of the Central Government,—

(a) alter, extend or abridge any of the purposes for which it has been established or for which it is being used immediately before the commencement of this Act, or amalgamate itself either wholly or partially with any other institution or society; or

(b) alter or amend in any manner the memorandum or rules and regulations; or

(c) sell or otherwise dispose of any property acquired by the Institute with money specifically provided for such acquisition by the Central Government :

Provided that no such approval shall be necessary in the case of any such movable property or class of movable property as may be specified by the Central Government in this behalf by general or special order; or

(d) be dissolved.

8. Constitution of Committees by Central Government for preparing programme of work by the Institute, etc.—(1) The Central Government may constitute as many Committees as and when it considers necessary consisting of such number of persons as it thinks fit to appoint thereto and assign to each such Committee all or any of the following duties, namely :—

(a) the preparation and submission to the Central Government as far as possible before the commencement of each financial year, of statements showing programmes of work agreed to be undertaken by the Institute during that year for which the Central Government may provide funds, as well as general financial estimates in respect of such work; and

(b) the settlement on broad lines of the programme of such work,

(2) Where the Institute does not agree to undertake any work suggested by any Committee referred to in sub-section (1), it shall give to the Central Government its reasons for not so agreeing.

9. Review of work done, inspection of assets, etc. — (1) The Central Government may constitute a Committee consisting of such number of persons as it thinks fit to appoint thereto for the purpose of—

(a) reviewing the work done by the Institute and the progress made by it;

(b) inspecting its buildings, equipment and other assets ;

(c) evaluating the work done by the Institute; and

(d) advising Government generally on any matter which in the opinion of the Central Government is of importance in connection with the work of the Institute ;

and the Committee shall submit its reports thereon in such manner as the Central Government may direct.

(2) Notice shall be given in every case to the Institute of the intention to cause a review, inspection or evaluation to be made, and the Institute shall be entitled to appoint a representative who shall have the right to be present and be heard at such review, inspection or evaluation.

(3) The Central Government may address the Chairman of the Institute with reference to the result or such review, inspection or evaluation as disclosed in any report of the Committee referred to in sub-section (1), and the Chairman shall communicate to the Central Government the action, if any, taken thereon.

(4) When the Central Government has, in pursuance of sub-section (3), addressed the Chairman of the Institute in connection with any matter, and the Chairman does not within a reasonable time take action to the satisfaction of the Central Government in respect thereof, the Central Government may, after considering any explanations furnished or representations made on behalf of the Institute, issue such directions as it considers necessary in respect of any of the matters dealt with in the report.

10. Institute to afford facilities to Committees. — The Institute shall be bound to afford all necessary facilities to any Committee constituted under section 8 or section 9 for the purpose of enabling it to carry out its duties.

11. Power to issue directions to Institute.—(1) The Central Government may, if it is satisfied that it is necessary so to do in the public interest, issue, for reasons to be recorded and communicated to the Institute, such directions as it thinks fit to the Institute, and such directions may include directions requiring the Institute—

(a) to amend the memorandum or to make or amend any rule or regulation within such period as may be specified in the directions;

(b) to give priorities to the work undertaken or to be undertaken by the Institute in such manner as the Central Government may think fit to specify in this behalf.

(2) Any directions issued under this section shall have effect, notwithstanding anything contained in any law for the time being in force or in the memorandum or rules and regulations of the Institute.

Note :—If the Institute, without just or reasonable cause, fails to give effect to the directions issued by the Central Government either under S. 9 (4) or this section, the Central Government can assume control of the functions of the Institute, by appointing one or more persons to take charge of the Institute or any part thereof for a period not exceeding two years.

12. Power of Central Government to assume functions of control.—(1) If, in the opinion of the Central Goverment,—

(i) the Institute without just or reasonable cause has made default in giving effect to any direction issued under sub-section (4) of section 9 or section 11; or

(ii) the Council of the Institute has exceeded or abused its powers in relation to the Institute or any part thereof;

the Central Government may, by written order, direct the Institute within a period to be specified in the order to show cause to the satisfaction of the Central Government against the making of any appointment referred to in sub-section (2).

(2) If, within the period fixed by any order issued under sub-section (1), cause is not shown to the satisfaction of the Central Government, the Central Government, may, by order published in the Official Gazette and stating the reasons therefor, appoint one or more persons to take charge of the Institute or any part thereof for such period not exceeding two years as may be specified in the order.

(3) Notwithstanding anything contained in any law for the time being in force or in the memorandum or rules and regulations of the Institute, on the issue of an order under sub-section (2), during the period specified in that order,—

(a) where the order provides for any person or persons being in charge of the Institute—

(i) all persons holding office as Members of the Council, including the Chairman, shall be deemed to have vacated their offices as such;

(ii) the person or persons appointed under sub-section (2) to be in charge of the Institute shall exercise all the powers and perform all the duties of the Chairman or Council of the Institute, whether at a meeting or otherwise, in respect of the Institute;

(b) where the order provides for any person or persons being in charge of any part of the Institute, the person or persons so appointed shall alone be entitled to exercise all the powers and perform all the duties of the Chairman or Council in relation to that part.

[THE] ST. JOHN AMBULANCE ASSOCIATION (INDIA) TRANSFER OF FUNDS ACT, 1956

(Act XXI of 1956)

[The text of the Act printed here is as on 31.5.1973.]

STATEMENT OF OBJECTS AND REASONS

"As a result of the partition of the country in August, 1947, it has become necessary to divide the funds of the St. John Ambulance Association (India) between the Associations in India and Pakistan. This bill is intended to provide legal cover and to give effect to the agreement reached between-the St. John Ambulance Association (India) and the St. John Ambulance Association (Pakistan) regarding the division of assets of the undivided Association."

—Gaz. of Ind., 1955, Extra., Pt. II-Sec. 2, p. 484.

[THE] ST. JOHN AMBULANCE ASSOCIATION (INDIA) TRANSFER OF FUNDS ACT, 1956

(Act XXI of 1956)*

[17th May, 1956]

An Act to provide for the transfer of a portion of the funds of the St. John Ambulance Association (India) to the St. John Ambulance Association (Pakistan).

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows :

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1955, Extra, Pt. II. S. 2, p. 484.

1. Short title. — This Act may be called THE ST. JOHN AMBULANCE ASSOCIATION (INDIA) TRANSFER OF FUNDS ACT, 1956.

2. Transfer of a portion of the funds of the St. John. Ambulance Association (India). — (1) The body known as the St. John Ambulance Association (India) or any person authorised on its behalf may, from out of the funds of the Association, transfer to the St. John Ambulance Association (Pakistan) the amounts specified in the Schedule as being the share of the St. John Ambulance Association (Pakistan) which that Association has agreed to receive for being applied to the purposes for which they were held by the St. John Ambulance Association (India).

(2) Upon the transfer of such amounts under sub.section (1), the St. John Ambulance Association (India) shall be freed and discharged from all obligations imposed upon it under any trust or other document in respect of anything to be done in Pakistan or in any part thereof.

Note.—The Act gives effect to an agreement reached between the St. John Ambulance Association (India) and the St. John Ambulance Association (Pakistan) regarding the division of the funds of the undivided Association as a result of the partition of the country.

THE SCHEDULE

(See section 2)

STATEMENT SHOWING THE SHARE OF THE ST. JOHN AMBULANCE ASSOCIATION (PAKISTAN).

Share of the St. John Ambulance Association (Pakistan) from the funds of the St. John Ambulance Association (India) as on the 30th June, 1948	15,85,780.8.0
Less advance paid up to the 31st December, 1952 ...	20,369.3.0
Balance due to the St. John Ambulance Association (Pakistan)	15,65,411.5.0
Less amount due to Punjab (I) St. John Ambulance Association	52,188.0.0
Net amount due to the St. John Ambulance Association (Pakistan)	15,13,223.5.0

Add interest earned on the securities in the share of the St. John Ambulance Association (Pakistan) from 1.7.48 to the date of transfer after adjusting interest on the amount due from the West Punjab Branch of the St. John Ambulance Association (Pakistan).

[THE INDIAN] SUCCESSION ACT, 1925
(Act XXXIX of 1925)

[The text of the Act printed here is as on 31-5-1973.]

CONTENTS

PART I
PRELIMINARY

SECTIONS

1. Short title.
2. Definitions.
3. Power of State Government to exempt any race, sect or tribe in the State from operation of Act.

PART II
OF DOMICILE

4. Application of Part.
5. Law regulating succession to deceased person's immoveable and moveable property, respectively.
6. One domicile only affects suceession to moveables.
7. Domicile of origin of person of legitimate birth.
8. Domicile of origin of illegitimate child.
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in India.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.
15. Domicile acquired by woman on marriage.
16. Wife's domicile during marriage.
17. Minor's acquisition of new domicile.
18. Lunatfc's acquisition of new domicile.
19. Succession to moveable property in India in absence of proof of domicile elsewhere.

PART III
MARRIAGE

20. Interests and powers not acquired nor lost by marriage.
21. Effect of marriage between person domiciled and one not domiciled in India.
22. Settlement of minor's property in contemplation of marriage.

PART IV
OF CONSANGUINITY

23. Application of Part.
24. Kindred or consanguinity.
25. Lineal consanguinity.
26. Collateral consanguinity.
27. Persons held for purpose of succession to be similarly related to deceased.
28. Mode of computing of degrees of kindred.

PART V
INTESTATE SUCCESSION
CHAPTER I
PRELIMINARY

29. Application of Part.
30. As to what property deceased considered to have died intestate.

CHAPTER II
RULES IN CASES OF INTESTATES OTHER THAN PARSIS

31. Chapter not to apply to Parsis.
32. Devolution of such property.
33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.
33A. Special provision where intestate has left widow and no lineal descendants.
34. Where intestate has left no widow, and where he has left no kindred.
35. Rights of widower.

Distribution where there are lineal Descendants.

36. Rules of distribution.
37. Where intestate has left child or children only.
38. Where intestate has left no child, but grand-child or grand-children.
39. Where intestate has left only great-grand-children or remoter lineal descendants.
40. Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.

Distribution where there are no lineal Descendants.

41. Rules of distribution where intestate has left no lineal descendants.
42. Where intestate's father living.
43. Where intestate's father dead, but his mother, brothers and sisters living.
44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.
45. Where intestate's father dead and his mother and children of any deceased brother or sister living.
46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.
47. Where intestate has left neither lineal descendant, nor father, nor mother.
48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.
49. Children's advancements not brought into hotchpot.

SECTIONS

CHAPTER III
SPECIAL RULES FOR PARSI INTESTATE

50. General principles relating to intestate succession.
51. Division of a male intestate's property among his widow, children and parents.
52. Division of a female intestate's property among her widower and children.
53. Division of share of predeceased child of intestate leaving lineal descendants.
54. Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow of any lineal descendant.
55. Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow of any lineal descendant.
56. Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.

PART VI
TESTAMENTARY SUCCESSION

CHAPTER I
INTRODUCTORY

57. Application of certain provisions of Part to a class of wills made by Hindus, etc.
58. General application of Part.

CHAPTER II
OF WILLS AND CODICILS

59. Person capable of making wills.
60. Testamentary guardian.
61. Will obtained by fraud, coercion or importunity.
62. Will may be revoked or altered.

CHAPTER III
OF THE EXECUTION OF UNPRIVILEGED WILLS

63. Execution of unprivileged wills.
64. Incorporation of papers by reference.

CHAPTER IV
OF PRIVILEGED WILLS

65. Privileged wills.
66. Mode of making, and rules for executing, privileged wills.

CHAPTER V
OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS

67. Effect of gift to attesting witness.
68. Witness not disqualified by interest or by being executor.
69. Revocation of will by testator's marriage.
70. Revocation of unprivileged will or codicil.
71. Effect of obliteration, interlineation or alteration in unprivileged will.
72. Revocation of privileged will or codicil.
73. Revival of unprivileged will.

CHAPTER VI
OF THE CONSTRUCTION OF WILLS

74. Wording of will.
75. Inquiries to determine questions as to object or subject of will.
76. Misnomer or misdescription of object.
77. When words may be supplied.
78. Rejection of erroneous particulars in description of subject.
79. When part of description may not be rejected as erroneous.
80. Extrinsic evidence admissible in cases of latent ambiguity.
81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.
82. Meaning of clause to be collected from entire will.
83. When words may be understood in restricted sense, and when in sense wider than usual.
84. Which of two possible constructions preferred.
85. No part rejected, if it can be reasonably construed.
86. Interpretation of words repeated in different parts of will.
87. Testator's intention to be effectuated as far as possible.
88. The last of two inconsistent clauses prevails.
89. Will or bequest void for uncertainty.
90. Words describing subject refer to property answering description at testator's death.
91. Power of appointment executed by general bequest.
92. Implied gift to objects of power in default of appointment.
93. Bequest to "heirs", etc., of particular person without qualifying terms.
94. Bequest to "representatives", etc., of particular person.
95. Bequest without words of limitation.
96. Bequest in alternative.
97. Effect of words describing a class added to bequest to person.
98. Bequest to class of persons under general description only.
99. Construction of terms.
100. Words expressing relationship denote only legitimate relatives or, failing such relatives reputed legitimate.
101. Rules of construction where will purports to make two bequests to same person.
102. Constitution of residuary legatee.
103. Property to which residuary legatee entitled.
104. Time of vesting legacy in general terms.
105. In what case legacy lapses.
106. Legacy does not lapse if one of two joint legatees die before testator.
107. Effect of words showing testator's intention to give distinct shares.

SECTIONS
108. When lapsed share goes as undisposed of.
109. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.
110. Bequest to A for benefit of B does not lapse by A's death.
111. Survivorship in case of bequest to described class.

CHAPTER VII
OF VOID BEQUESTS
112. Bequest to person by particular description, who is not in existence at testator's death.
113. Bequest to person not in existence at testator's death subject to prior bequest.
114. Rule against perpetuity.
115. Bequest to a class some of whom may come under rules in sections 113 and 114.
116. Bequest to take effect on failure of prior bequest.
117. Effect of direction for accumulation.
118. Bequest to religious or charitable uses.

CHAPTER VIII
OF THE VESTING OF LEGACIES
119. Date of vesting of legacy when payment or possession postponed.
120. Date of vesting when legacy contingent upon specified uncertain event.
121. Vesting of interest in bequest to such members of a class as shall have attained particular age.

CHAPTER IX
OF ONEROUS BEQUESTS
122. Onerous bequests.
123. One of two separate and independent bequests to same person may be accepted, and other refused.

CHAPTER X
OF CONTINGENT BEQUESTS
124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.
125. Bequest to such of certain persons as shall be surviving at some period not specified.

CHAPTER XI
OF CONDITIONAL BEQUESTS
126. Bequest upon impossible condition.
127. Bequest upon illegal or immoral condition.
128. Fulfilment of condition precedent to vesting of legacy.
129. Bequest to A and on failure of prior bequest to B.
130. When second bequest not to take effect on failure of first.
131. Bequest over, conditional upon happening or not happening of specified uncertain event.
132. Condition must be strictly fulfilled.
133. Original bequest not affected by invalidity of second.
134. Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen.
135. Such condition must not be invalid under section 120.
136. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.
137. Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.

CHAPTER XII
OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT
138. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.
139. Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.
140. Bequest of fund for certain purposes, some of which cannot be fulfilled.

CHAPTER XIII
OF BEQUESTS TO AN EXECUTOR
141. Legatee named as executor cannot take unless he shows intention to act as executor.

CHAPTER XIV
OF SPECIFIC LEGACIES
142. Specific legacy defined.
143. Bequest of certain sum where stocks, etc., in which invested are described.
144. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.
145. Bequest of money where not payable until part of testator's property disposed of in certain way.
146. When enumerated articles not deemed specifically bequeathed.
147. Retention, in form, of specific bequest to several persons in succession.
148. Sale and investment of proceeds of property bequeathed to two or more persons in succession.
149. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

SECTIONS

CHAPTER XV

OF DEMONSTRATIVE LEGACIES

150. Demonstrative legacy defined.
151. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

CHAPTER XVI

OF ADEMPTION OF LEGACIES

152. Ademption explained.
153. Non-ademption of demonstrative legacy.
154. Ademption of specific bequest of right to receive something from third party.
155. Ademption pro tanto by testator's receipt of part of entire thing specifically bequeathed.
156. Ademption pro tanto by testator's receipt of portion of entire fund of which portion has been specifically bequeathed,
157. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.
158. Ademption where stock, specifically bequeathed, does not exist at testator's death.
159. Ademption pro tanto where stock, specifically bequeathed, exists in part only at testator's death.
160. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.
161. When removal of thing bequeathed does not constitute ademption.
162. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it,
163. Change by operation of law of subject of specific bequest between date of will and testator's death.
164. Change of subject without testator's knowledge.
165. Stock specifically bequeathed lent to third party on condition that it be replaced.
166. Stock specifically bequeathed sold but replaced, and belonging to testator at his death.

CHAPTER XVII

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST

167. Non-liability of executor to exonerate specific legatees.
168. Completion of testator's title to things bequeathed to be at cost of his estate.
169. Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.
170. Exoneration of specific legatee's stock in joint-stock company.

CHAPTER XVIII

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS

171. Bequest of thing described in general terms.

CHAPTER XIX

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND

172. Bequest of interest or produce of fund.

CHAPTER XX

OF BEQUESTS OF ANNUITIES

173. Annuities created by will payable for life only unless contrary intention appears by will.
174. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.
175. Abatement of annuity.
176. Where gift of annuity and residuary gift, whole annuity to be first satisfied.

CHAPTER XXI

OF LEGACIES TO CREDITORS AND PORTIONERS

177. Creditor prima facie entitled to legacy as well as debt.
178. Child prima facie entitled to legacy as well as portion.
179. No ademption by subsequent provision for legatee.

CHAPTER XXII

OF ELECTION

180. Circumstances in which election takes place.
181. Devolution of interest relinquished by owner.
182. Testator's belief as to his ownership immaterial.
183. Bequest for man's benefit how regarded for purpose of election.
184. Person deriving benefit indirectly not put to election.
185. Person taking in individual capacity under will may in other character elect to take in opposition.
186. Exception to provisions of last six sections.
187. When acceptance of benefit given by will constitutes election to take under will.
188. Circumstances in which knowledge or waiver is presumed or inferred.
189. When testator's representatives may call upon legatee to elect.
190. Postponement of election in case of disability.

SECTIONS

CHAPTER XXIII

OF GIFTS IN CONTEMPLATION OF DEATH

191. Property transferable by gift made in contemplation of death.

PART VII

PROTECTION OF PROPERTY OF DECEASED

192. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.
193. Inquiry made by Judge.
194. Procedure.
195. Appointment of curator pending determination of proceeding.
196. Powers conferrable on curator.
197. Prohibition of exercise of certain powers by curators. Payment of debts, etc., to curator.
198. Curator to give security and may receive remuneration.
199. Report from Collector where estate includes revenue-paying land.
200. Institution and defence of suits.
201. Allowances to apparent owners pending custody by curator.
202. Accounts to be filed by curator.
203. Inspection of accounts and right of interested party to keep duplicate.
204. Bar to appointment of second curator for same property.
205. Limitation of time for application for curator.
206. Bar to enforcement of Part against public settlement or legal directions by deceased.
207. Court of Wards to be made curator in case of minors having property subject to its jurisdiction.
208. Saving of right to bring suit.
209. Effect of decision of summary proceeding.
210, Appointment of public curators.

PART VIII

REPRESENTATIVE TITLE TO PROPERTY OF DSCEASED ON SUCCESSION

211. Character and property of executor or administrator as such.
212, Right to intestate's property.
213. Right as executor or legatee when established.
214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.
215. Effect on certificate of subsequent probate or letters of administration.
216. Grantee of probate or administration alone to sue, etc., until same revoked.

PART IX

PROBATE, LETTERS OF ADMINISTRATION AND ADMINISTRATION OF ASSETS OF DECEASED

217. Application of Part.

CHAPTER I

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION

218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.
219. Where deceased is not a Hindu, Muhammadan, Buddist, Sikh, Jaina or exempted person.
220. Effect of letters of administration.
221. Acts not validated by administration.
222. Probate only to appointed executor.
223. Persons to whom probate csnnot be granted.
224. Grant of probate to several executors simultaneously or at different times.
225. Separate probate of codicil discovered after grant of probate,
226. Accrual of representation to surviving executor.
227. Effect of probate.
228. Administration, with copy annexed, of authenticated copy of will proved abroad.
229. Grant of administration where executor has not renounced.
230. Form and effect of renunciation of executorship.
231. Procedure where executor renounces or fails to accept within time limited.
232. Grant of administration to universal or residuary legatees.
233. Right to administration of representative of deceased residuary legatee.
234. Grant oi administration where no executor, nor residuary legatee, nor representative of such legatee.
235. Citation before grant of administration to legatee other than universal or residuary.
236. To whom administration may not be granted.

CHAPTER II

OF LIMITED GRANTS
GRANTS LIMITED IN DURATION

237. Probate of copy or draft of lost will.
238. Probate of contents of lost or destroyed will.
239. Probate of copy where original exists.
240. Administration until will produced.

Grants for the Use and Benefit of others having Right

241. Administration, with will annexed, to attorney of absent executor.
242. Administration, with will annexed, to attorney of absent person who, if present, would be entitled to administer.
243. Administration to attorney of absent person entitled to administer in case of intestacy.

SECTIONS

244. Administration during minority of sole executor or residuary legatee.
245. Administration during minority of several executors or residuary legatees.
246. Administration for use and benefit of lunatic or minor.
247. Administration pendente lite.
248. Probate limited to purpose specified in will.

Grants for special purposes

249. Administration, with will annexed, limited to particular purpose.
250. Administration limited to property in which person has beneficial interest.
251. Administration limited to suit.
252. Administration limited to purpose of becoming party to suit to be brought against administrator.
253. Administration limited to collection and preservation of deceased's property.
254. Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration.

Grants with Exception

255. Probate or administration, with will annexed, subject to exception.
256. Administration with exception.

Grants of the rest

257. Probate or administration of rest.

Grant of Effects unadministered

258. Grant of effects unadministered.
259. Rules as to grants of effects unadministered.
260. Administration when limited grant expired and still some part of estate unadministered.

CHAPTER III

ALTERATION AND REVOCATION OF GRANTS

261. What errors may be rectifted by Court.
262. Procedure where codicil discovered after grant of administration with will annexed.
263. Revocation or annulment for just cause.

CHAPTER IV

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION

264. Jurisdiction of District Judge in granting and revoking probates, etc.
265. Power to appoint Delegate of District Judge to deal with non-contentious cases.
266. District Judge's powers as to grant of probate and administration.
267. District Judge may order person to produce testamentary papers.
268. Proceedings of District Judge's Court in relation to probate and administration.
269. When and how District Judge to interfere for protection of property.
270. When probate or administration may be granted by District Judge.
271. Disposal of application made to Judge of district in which deceased had no fixed abode.
272. Probate and letters of administration may be granted by Delegate.
273. Conclusiveness of probate or letters of administration.
274. Transmission to High Courts of certificate of grants under proviso to section 273.
275. Conclusiveness of application for probate or administration if properly made and verified.
276. Petition for probate.
277. In what cases translation of will to be annexed to petition. Verification of translation by person other than Court translator.
278. Petition for letters of administration.
279. Addition to statement in petition, etc., for probate or letters of administration in certain cases.
280. Petition for probate, etc., to be signed and verified.
281. Verification of petition for probate, by one witness to will.
282. Punishment for false averment in petition or declaration.
283. Powers of District Judge.
284. Caveats against grant of probate or administration.

Form of caveat.

285. After entry of caveat, no proceeding taken on petition until after notice to caveator.
286. District Delegate when not to grant probate or administration.
287. Power to transmit statement to District Judge in doubtful cases where no contention.
288. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
289. Grant of probate to be under seal of Court.
290. Grant of letters of administration to be under seal of Court.
291. Administration-bond.
292. Assignment of administration-bond.
293. Time for grant of probate and administration.
294. Filing of original wills of which probate or administration with will annexed granted.
295. Procedure in contentious cases.
296. Surrender of revoked probate or letters of administration.
297. Payment to executor or administrator before probate or administration revoked.
298. Power to refuse letters of administration.
299. Appeals from orders of District Judge.
300. Concurrent jurisdiction of High Court.

SECTIONS
301. Removal of executor or administrator and provision for successor.
302. Directions to executor or administrator.

CHAPTER V
OF EXECUTORS OF THEIR OWN WRONG
303. Executor of his own wrong.
304. Liability of executor of his own wrong.

CHAPTER VI
OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR
305. In respect of causes of action surviving deceased, and debts due at death.
306. Demands and rights of action of or against deceased survive to and against executor or administrator.
307. Power of executor or administrator to dispose of property.
308. General powers of administration.
309. Commission or agency charges.
310. Purchase by executor or administrator of deceased's property.
311. Powers of several executors or administrators exercisable by one.
312. Survival of powers on death of one of several executors or administrators.
313. Powers of administrator of effects unadministered.
314. Powers of administrator during minority.
315. Powers of married executrix or administratrix.

CHAPTER VII
OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR
316. As to deceased's funeral.
317. Inventory and account.
318. Inventory to include property in any part of India in certain cases.
319. As to property of, and debts owing to, deceased.
320. Expenses to be paid before all debts.
321. Expenses to be paid next after such expenses.
322. Wages for certain services to be next paid, and then other debts.
323. Save as aforesaid, all debts to be paid equally and rateably.
324. Application of moveable property to payment of debts where domicile not in India.
325. Debts to be paid before legacies.
326. Executor or administrator not bound to pay legacies without indemnity.
327. Abatement of general legacies.
328. Non abatement of specific legacy when assets, sufficient to pay debts.
329. Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.
330. Rateable abatement of specific legacies.
331. Legacies treated as general for purpose of abatement.

CHAPTER VIII
OF ASSENT TO A LEGACY BY EXECUTOR OR ADMINISTRATOR
332. Assent necessary to complete legatee's title.
333. Effect of executor's assent to specific legacy.
334. Conditional assent.
335. Assent of executor to his own legacy.
336. Effect of executor's assent.
337. Executor when to deliver legacies.

CHAPTER IX
OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES
338. Commencement of annuity when no time fixed by will.
339. When annuity, to be paid quarterly or monthly, first falls due.
340. Dates of successive payments when first payment directed to be made within a given time or on day certain: death of annuitant before date of payment.

CHAPTER X
OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES
341. Investment of sum bequeathed where legacy, not specific, given for life.
342. Investment of general legacy, to be paid at future time: disposal of intermediate interest.
343. Procedure when no fund charged with, or appropriated to annuity.
344. Transfer to residuary legatee of contingent bequest.
345. Investment of residue bequeathed for life, without direction to invest in particular securities.
346. Investment of residue bequeathed for life, with direction to invest in specified securities.
347. Time and manner of conversion and investment.
348. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

CHAPTER XI
OF THE PRODUCE AND INTEREST OF LEGACIES
349. Legatee's title to produce of specific legacy.
350. Residuary legatee's title to produce of residuary fund.
351. Interest when no time fixed for payment of general legacy.
352. Interest when time fixed.
353. Rate of interest.

SECTIONS
354. No interest on arrears of annuity within first year after testator's death.
355. Interest on sum to be invested to produce annuity.

CHAPTER XII
OF THE REFUNDING OF LEGACIES
356. Refund of legacy paid under Court's orders.
357. No refund if paid voluntarily.
358. Refund when legacy has become due on performance of condition within further time allowed under section 137.
359. When each legatee compellable to refund in proportion.
360. Distribution of assets.
361. Creditor may call upon legatee to refund.
362. When legatee, not satisfied or compelled to refund under section 361, cannot oblige one paid in full to refund.
363. When unsatisfied legatee must first proceed against executor, if solvent.
364. Limit to refunding of one legatee to another.
365. Refunding to be without interest.
366. Residue after usual payments to be pafd to residuary legatee.
367. Transfer of assets from India to executor or administrator in country of domicile for distribution.

CHAPTER XIII
OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION
368. Liability of executor or administrator for devastation.
369. Liability of executor or administrator for neglect to get any part of property.

PART X
SUCCESSION CERTIFICATES
370. Restriction on grant of certificates under this Part.
371. Court having jurisdiction to grant certificate.
372. Application for certificate.
373. Procedure on application.
374. Contents of certificate.
375. Requisition of security from grantee of certificate.
376. Extension of certificate.
377. Forms of certificate and extended certificate.
378. Amendment of certificate in respect of powers as to securities.
379. Mode of collecting court-fees on certificates.
380. Local extent of certificate.
381. Effect of certificate.
382. Effect of certificate granted or extended by Indian representative in foreign State and in certain other cases.
383. Revocation of certificate.
384. Appeal.
385. Effect on certificate of previous certificate, probate of letters of administration.
386. Validation of certain payments made in good faith to holder of invalid certificate.
387. Effect of decisions under this Act, and liability of holder of certificate thereunder.
388. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.
389. Surrender of superseded and invalid certificates.
390. Provisions with respect to certificates under Bombay Regulation VIII of 1827.

PART XI
MISCELLANEOUS
391. Saving.
392. [Repealed.]

SCHEDULE I.—TABLE OF CONSANGUINITY.
SCHEDULE II.—
PART I.—ORDER OF NEXT-OF-KIN IN CASE OF PARSI INTESTATES REFERRED TO IN SECTION 54.
PART II.—ORDER OF NEXT-OF-KIN IN CASE OF PARSI INTESTATES REFERRED TO IN SECTION 55.
SCHEDULE III.—PROVISIONS OF PART VI APPLICABLE TO CERTAIN WILLS AND CODICILS DESCRIBED IN SECTION 57.
SCHEDULE IV. — FORM OF CERTIFICATE.
SCHEDULE V.—FORM OF CAVEAT.
SCHEDULE VI.—FORM OF PROBATE.
SCHEDULE VII. — FORM OF LETTERS OF ADMINISTRATION.
SCHEDULE VIII.—FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.
SCHEDULE IX.—[Repealed.]

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to consolidate the Indian law relating to succession. The separate existence on the Statute Book of a number of large and important enactments renders the present law difficult of ascertainment and there is therefore every justification for an attempt to consolidate* it. The Bill has been preferred by the Statute Law Revision Committee as a purely consolidating measure. No intentional change of law has therefore been made.—Gaz. of Ind., 1923, Pt. V, p. 40.

[*] And not 'amending.'

This Act has repealed the following Acts (vide S. 392 since repealed.)

(1) The Succession (Property Protection) Act, XIX of 1841.
(2) The Indian Succession Act, X of 1865.
(3) Parsi Intestate Succession Act, XXI of 1865.
(4) The Hindu Wills Act, XXI of 1870.
(5) The Married Women's Property Act, III of 1874, S. 2.
(6) The Probate and Administration Act, V of 1881.
(7) The Probate and Administration Act, VI of 1889.
(8) The Probate and Administration Act, II of 1890.
(9) The Probate and Administration Act, VIII of 1903.
(10) The District Delegates Act, VI of 1881.
(11) The Succession Certificate Act, VII of 1889.
(12) The Native Christian Administration of Estates Act, VII of 1901.

ACT HOW AFFECTED BY SUBSEQUENT LEGISLATION

—Amended by Acts XXXVII of 1925; XL of 1926; X of 1927; XVIII of 1927; XIV of 1928; XVIII of 1929; XXI of 1929; XVII of 1931; XXXV of 1934; XVII of 1939; XXXV of 1949; III of 1951; XLVIII of 1952; XLII of 1953; XXXIV of 1957; XVI of 1962; LII of 1964.

—Adapted by A. O. 1937; A. C. O. A., 1948; A. L. O. 1950.

—Amended in West Bengal by W. B. Act 21 of 1953.

—Extended by Acts IV of 1941; LIX of 1949; XXX of 1950; LXVIII of 1956; Regn. VI of 1963.

—Extended in Bombay by Bom. Act IV of 1950.

—Extended in Madras by Mad. Act XXXV of 1949.

—Extended in Punjab by Punj. Act V of 1950.

—Repealed in Part by Act XII of 1927; XIII of 1953.

COGNATE ACTS AND PROVISIONS

1. Administrators General Act, XIV of 1963.
2. Caste Disabilities Removal Act, XXI of 1850.
3. Cutchi Memons Act, X of 1938.
4. Hindu Inheritance (Removal of Disabilities) Act, XII of 1928.
5. Hindu Succession Act, XXX of 1956, S. 5 (i).
6. Hindu Widow's Re-marriage Act, XV of 1856.
7. Legal Representatives' Suits Act, XII of 1855.
8. Married Women's Property Act, III of 1874, Ss. 7 and 10.
9. Motor Vehicles Act, IV of 1939, S. 102.
10. Muslim Personal Law (Shariat) Application Act, XXVI of 1937, S. 2.
11. Special Marriage Act, XLIII of 1954, S. 21.
12. Hindu Minority and Guardianship Act, XXXII of 1956.

[THE INDIAN] SUCCESSION ACT, 1925
(Act XXXIX of 1925)*

[30th September, 1925.]

An Act to consolidate the law applicable to intestate and testamentary succession †[* * *].

WHEREAS it is expedient to consolidate the law applicable to intestate and testamentary succession †[* * *]; It is hereby enacted as follows :—

[*] For Statement of Objects and Reasons, see Gaz. of Ind., 1923, Pt. V, p. 401 ; and for Report of Joint Committee, see Gaz. of Ind., 1925, Pt. V, p. 103.

The Act has been extended to Berar by the Berar Laws Act, 1941 (IV of 1941).

It has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 (LIX of 1949), S. 3 [1.1.1950], to the States of Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950 (XXX of 1950), S. 3 [16.4.1950], and to the State of Manipur by the Union Territories (Laws) Amendment Act, 1956 (LXVIII of 1956), S. 3 [w. e. f. 1.1.1957]. Manipur and Tripura are full-fledged States now (see Act 81 of 1971) but Vindhya Pradesh is a part of the M. P. State (see Act 37 of 1956, S. 9).

It has been extended also to the States merged in the States of—

Bombay : see Bom. Act IV of 1950, S. 3 [30.3.1950] ;

Madras : see Mad. Act XXXV of 1949, S. 3 [1.1.1950] ;

Punjab : see Punj. Act V of 1950, S. 3 [15.4.1950].

The Act has been extended to the Union Territory of Dadra and Nagar Haveli by Regn. VI of 1963, w. e. f. 1.7.1965.

The Act does not affect the rights, duties and privileges of any Administrator General—see Act XLV of 1963, S. 53.

[†] The words "in the Provinces of India" were omitted by A. L. O. 1950 [26.1.1950].

PART I

PRELIMINARY

1. Short title. — This Act may be called THE INDIAN SUCCESSION ACT, 1925.*

[1865—S. 1.]

[*] This Act deals with the most important of all universal successions—the passage of the rights and liabilities of a deceased person to his heirs—and it comprises the law of succession to an intestate generally applicable to all classes domiciled in India, except Hindus, Sikhs, Jains, Boudhas, Brahmos, Aryasamajists and Mohemadans. Except the Mohemadans, law of succession to Hindus, Jains,

Section 1 — Synopsis

1. Scope and applicability of the Act.
2. Retrospective effect.
3. Construction of the Act.

1. Scope and applicability of the Act. — (1) Preamble to this Act makes it clear that the Act was only intended to apply to matters of succession. It deals with matters connected with intestate and testamentary succession. A I R 1943 Lah 260 (264) = I L R (1943) Lah 765 (SB).

(2) The provisions of the Act show that the Act is of universal application in this country unless a person claiming to be excepted can show that he is specifically excepted from the operation of its provisions. (1910) 12 Cal L J 459 (461) (DB) ** AIR 1935 Lah 646 (647). (Applies also to subjects of foreign State.)

(3) Person who ceases to be Hindu in religion and becomes Christian cannot elect to be bound by Hindu law in matter of succession. After passing of the Act, Hindu convert to Christianity is now governed solely by the Act. A I R 1922 P C 14 (17) = 48 Ind App 381 = 43 All 525 ** A I R 1932 Oudh 85 (87) (DB) ** (1912) 11 Mad L Tim 232 (239) (DB).

[See also 1909 Pun Re No. 36 p. 102 (109) (DB) ** (1910) 12 Cal L J 459 (461) (DB).]

(4) Makkathayee Ezhavas of erstwhile Cochin State—Succession—Customary law — Absence of proof custom — Principles of justice, equity and good conscience applicable to party must be rule of Hindu law — Daughters not entitled to share in properties left by deceased father. A I R 1968 Ker 123 (124, 125)=1967 Ker L T 1051.

(5) The Act is not applicable to the Crown when in takes the property upon escheat. A I R 1932 All 220 (221)=54 All 226.

Sikhs, Boudhas and others who are brought up as Hindus is to be found in the Hindu Succession Act, 1956.

The law thus principally applies to domiciled Europeans, to Eurasians, to Jews, to native Christians and to some extent the Parsis, though a large number of rules as to wills have also been extended to Hindus, Jains, Sikhs and Boudhas too.

It seems there are two other forms of universal succession recognised by the Indian law—confiscation to the State (Penal Code 1860, Ss. 62, 121 and 122) and the succession of a trustee or assignee in insolvency to the rights and liabilities of the insolvent (Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920).

Government's right to property accruing by escheat or lapse or as bona vacantia is recognised by Constitution of India, Art. 296.

The Act applies both to moveable as well as immoveable property.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) "administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor ;

(b) "codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will ;

*[(bb) "District Judge" means the Judge of a principal Civil Court of original jurisdiction ;]

[*] Inserted by the Indian Succession (Amendment) Act, 1929 (XVIII of 1929), S. 2.

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2. Retrospective effect.—(1) Act of 1925 has no retrospective effect and does not apply to wills executed prior to the passing of the Act. (1935) 18 Nag L J 1 (9) (DB) * * (1909) 31 All 239 (243) (DB).

3. Construction of the Act.—(1) Where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law or of the English law upon which it may be founded. These observations apply with peculiar force to testamentary cases which are governed by the Indian Succession Act. A I R 1928 P C 2 (4) = 55 Ind App 18 = 7 Pat 221 * * (1874) 12 Beng L R 423 (427 to 429).

(2) Courts should not read into sections of the Act construction which is at variance with ordinary meaning of words used merely because there is distinction in English law between citation to propound and prove will and citation to take probate. AIR 1941 Oudh 293 (296)=16 Luck 454 (FB).

(3) Succession Act is partially fiscal enactment, and it is to be administered, as far as possible, leniently and must be construed in favour of subject. AIR 1934 All 296 (297).

Section 2 — Synopsis

1. "Codicil."
2. "District Judge."
3. "Executor."
4. "Indian Christian."
5. "Minor" and "minority."
6. "Probate"
7. "Will."
8. Conditional or contingent Will.

1. "Codicil." — (1) After the granting of letters of administration in respect of a will, a private memorandum book of the deceased giving some directions for disposing certain articles was found. In an application for admitting these entries to probate, it was held that the memorandum was not a testamentary document and could not be treated as a codicil. (1879) 4 Cal 721 (722).

(2) The Codicil is a formal document and has all the characteristics of a will. An informal communication from the testator to the legatee in the form of a letter to act in the manner indicated therein is not a codicil. I L R (1967) Mys 44 (53) (DB).

(3) Where there is a distinct disposition made by a will, that disposition cannot be revoked by a codicil except through the medium and use of words equally clear and distinct. (1898) 1 Ch 95 (98).

(4) An obviously erroneous recital of the will in the codicil will not alter the construction of the will but if the recital in the codicil is not obviously erroneous it may be referred to clear up the ambiguity in the will. (1904) 2 Ch 52 (55).

2. "District Judge." — (1) Under S. 2 of the Act as amended in 1929, High Court on the Original Side has power to issue succession certificates. AIR 1931 Rang 281 (281) = 9 Rang 205 (DB) * * AIR 1950 Cal 377 (379) = ILR (1950) 1 Cal 381 * * AIR 1931 Cal 580 (580, 581)=58 Cal 801.

[See also A I R 1930 Mad 779 (781, 782) = 53 Mad 237 (DB).]

[See however A I R 1949 Pat 318 (323) = 27 Pat 18 (DB). ("District Judge" does not include Judge of Patna High Court as it is not principal Civil Court of original jurisdiction.) * * AIR 1934 All 958 (958) = 57 All 302 (DB).]

(2) When the term "District Judge" is used, it has Reference not to a persona designata but to a Court and that Court is principal civil Court of Original Jurisdiction — Additional District

(c) "executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided ;

*[(cc) "India" means the territory of India excluding the State of Jammu and Kashmir ;]

[*] Inserted by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule [1.4.1951].

(d) "Indian Christian" means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion :

(e) "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years ; and "minority" means the status of any such person ;

(f) "probate" means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator ;

*[(g) "State" includes any division of India having a Court of the last resort ;] and

(h) "Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

[*] Substituted for the original clause by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule. [1-4.1951].

[1865—S. 3 ; Native Christians Act, 1901—S. 2 ; Probate and Administration Act, 1881—S. 2.]

STATE AMENDMENT

West Bengal

To clause (bb), add the following proviso, namely :—

"Provided that as respect the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta, references in Part X and Schedule VIII of this Act to a District Judge shall be construed as references to the City Civil Court established under the City Civil Court Act, 1953."

—W. B. Act XXI of 1953, S. 22 and Second Schedule [23.2.1957].

Section 2—Note 2 (contd)
Judge has jurisdiction to grant probate of will under S. 264 (1). A I R 1970 Assam 111 (113) = Assam L R (1970) Assam 45 (DB).

(3) Powers of Additional District Judge with regard to cases transferred to him by District Judge are same as those of District Judge. A I R 1924 Pat 593 (593, 594)=3 Pat 609 (DB) * * AIR 1956 Bhopal 69 (70). (Term 'District Judge' would include Additional District Judge.) * * AIR 1949 Nag 408 (409)=ILR (1950) Nag 145.

3. "Executor." — (1) Heirs are not included in definition of 'executors' and 'administrators' in S. 2. AIR 1936 Rang 17 (24) = 13 Rang 385 (DB).

(2) The testator executed a will leaving the bulk of his property to his minor daughter and appointing his mother as her guardian. The will stated that she should have full right to spend the income only. No other specific duties were laid upon the testator's mother but there were directions that he did not wish certain ceremonies after death to be performed but merely that his mother should feast the poor on death anniversaries: Held, that these facts were quite insufficient to make the mother executor by implication. AIR 1927 Lah 770 (770).

(3) A legatee who undertakes to carry out the wishes of a testator will be treated as a trustee and compelled to carry out the instructions of the testator. AIR 1915 Bom 10 (10) = 40 Bom 1.

(4) Where the person named as an executor by the will never accepted the office of an executor and all along the residuary legatee had been effectively representing the estate and also administering it, the residuary legatee would be liable to the beneficiary for the latter's share. AIR 1960 Punj 231 (234).

(5) In order to constitute one an executor according to the tenor of the will, it must appear on a reasonable construction thereof that the testator intended that he should collect his assets, pay his debts and funeral expenses and legacies which are the essential duties of an executor. ILR (1954) 1 Cal 140 (143).

(6) To be a constructive executor, a person must be charged with payment of debts — A charge of payment of legacy by itself is not sufficient to constitute constructive executor. AIR 1943 All 357 (359) = ILR (1946) All 398 (DB).

(7) A person who has been named as an executor by a will is not bound to become an

Section 2 — Note 3 (contd.)
executor and until he acts as such or expressly or clearly accepts such position, he cannot become executor. It cannot be inferred that the person has accepted the office of an executor from the fact that he was intimately related to the testator and that he signed the will wherein he was named as executor. AIR 1960 Punj 231 (234).

(8) The effect of the Hindu Wills Act, 1870, was to place the executor in India on the same footing as an English executor. AIR 1924 Pat 721 (730) = 3 Pat 880 (DB).

(9) Will of the deceased son not appointing any executrix but leaving some property to his mother with the direction that she should also pay certain debts — Held that the direction that she should pay certain debts out of certain property was not enough to constitute her an executrix for the general purposes of administration. (1899) 22 Mad 345 (346).

(10) It will be very difficult to determine when an executor ceases to have duties qua executor or virtue officii even when the facts are fully ascertained where the same persons have been appointed both executors and trustees. (1902) 1 Ch 176 (182).

4. "Indian Christian." — (1) In order to determine whether a person died a Christian for the purposes of the Act, the Court must have regard to the formal protestations of his belief rather than to any private or secret religious practice in which he may indulge. AIR 1934 Rang 72 (73) = 12 Rang 184 (DB).

(2) Notification of Governor-General exempting native christians in the province of Coorg from operation of Act — The expression "native christian" takes within its sweep all those Indians who were converted to christianity and their christian descendants — The only native christians who stood exempted from operation of Act were those who had their domicile in the province of Coorg or in any event those who had their permanent home in the province of Coorg without any intention of removing themselves therefrom. (1967) 2 Mys L J 210 (221, 225) (DB).

5. "Minor" and 'minority". — (1) The definitions of "minor" and "minority" in the Act do not apply when a person enters into a contract on his own behalf, and not in any representative character under that Act, so that he might be of age for the purposes of that Act but in other respects a minor. (1881) 8 Cal L R 419 (424) ** (1874) 12 Beng L R 358 (360) (DB).

(2) When a minor was brought under the operation of the Minors Act (40 of 1858) and a guardian was appointed the age of majority was altered from 18 to 21 years. (1890) 17 Cal 347 (359) = 16 Ind App 195 (PC).

(3) Certificate of administration granted under Act XL of 1858 took effect when it was actually issued and where a minor attained the age of 18 before such certificate was issued and entered into a contract he was bound by such contract. (1883) 9 Cal 901 (904) (DB). (Affirming on appeal 8 Cal 714.)

6. "Probate". — (1) Issue of certified copy of will by Court with grant of administration held "probate" within meaning of S. 3, Succession Act, 1865 — Subsequent limitation of grant by Appellate Court does not affect grant — Production before decree is sufficient compliance of section. (1911) 38 Cal 327 (334) = 38 Ind App 7 (PC).

(2) The grant of probate establishes conclusively the legal character of the person to whom the grant is made. It is conclusive evidence of the validity and due execution of the will and of the testamentary capacity of the testator. AIR 1959 Cal 795 (796).

7. "Will". — (1) The fundamental idea of a will is that the testator should thereby dispose of his property, or such part thereof as his personal law permits him to bequeath by will, in such manner as seems to him best; and there is no reason why the provisions of a will should not follow the rules applicable on intestacy. AIR 1933 Rang 393 (396) (DB).

(2) The definition of will does not require any written instrument. (1900) 24 Bom 8 (11, 12). (Succession Act extends to nuncupative wills and they can be admitted to probate.)

(3) Oral will — On death of husband, his wife acting on instructions of her husband giving away some properties to a relation under a deed —Deed mentioning motive of transfer being the wish of deceased husband — Wife acting against her own interest by giving away property which she could alienate for necessity — Oral will by deceased husband can be inferred. AIR 1969 Mys 64 (68, 69)=(1968) 2 Mys L J 155 (DB).

(4) In order to decide whether a document is a "will" or not it should be ascertained whether it is revocable or not. (1906) 3 Cal L J 370 (372) (DB).

(5) To ascertain whether a document is a "will" or not, the principal test to be applied is whether the disposition made in that document takes effect during the lifetime of the executant or whether it takes effect after his death. (1909) 10 Cal L J 644 (645) (DB).

(6) Document intended to operate from date of execution is not will. (1913) 35 All 337 (346) = 40 Ind App 161 (PC) ** (1920) 1 Pat L Tim 457 (458) (DB).

(7) Merely calling a deed a will does not make it a will. AIR 1921 P C 89 (90) ** AIR 1925 P C 196 (198) = 52 Ind App 305=48 Mad 614. (Will containing power to adopt though invalid as will, may be valid authority to adopt.)

(8) The question as to whether a certain document is a deed of gift or a will depends not merely upon the form of the document but upon the intention gathered from the words used in the document itself. The name by which the document is styled, the registration of it, the reservation of life estate, the reservation of power of revocation and the use of present or future tense are all circumstances which are taken into consideration in coming to one conclusion or the other and all these are indications to find out the intention coupled with the surrounding circumstances. In construing the document the conduct of the parties subsequent to the execution should not be taken into consideration, where there is no ambiguity in the words and expression used in the document. 1958 Andh L T 570 (573).

(9) The two characteristics of a will are that it must be intended to come into effect after the death of the testator, and it must be revocable. That, at the time of the execution of the docu-

Section 2 — Note 7 (contd.)

ment, the executant was unaware that it was a will and that he thought that it was a document of some kind is irrelevant; it is the intention of the executant, as expressed in the document, which decides the question. AIR 1947 Pat 449 (452).

(10) A will as defined in S. 2 (h) is dependent upon the testator's death for its vigour and effect. The two characteristics of a will, are (i) that it must be intended to come into effect after death of the testator, and (ii) that it must be revocable. AIR 1959 Pat 585 * * AIR 1956 Trav-Co 127 (128) * * (1955) 2 M L J 180 (183).

(11) There is no objection to one part of an instrument operating in presenti as a deed and another in futuro as a will. AIR 1946 Lah 200 (209) = ILR (1945) Lah 554 (DB) * * AIR 1959 Pat 585 (587).

(12) Where a person, intending to make a will, has proceeded so far with the process that he has declared his intentions finally formed either by making the declaration or by approving a writing embodying them, without any idea of revising or reconsidering them, with the intention that the process be continued to give effect to his intentions and directions in such form, as he desires to be given, or to complete the formalities like signing, etc., and the process is thereafter interrupted by the death of the testator, the declaration, nevertheless amounts to a complete will, unless it can be proved that the intention was given up before death or unless, such formalities are required by law for the validity of the will. AIR 1949 All 655 (657) =ILR (1949) All 776.

(13) Where a document in effect lays down rules for devolution of the testator's properties after his death with no present disposition in favour of anybody and carries with it, by necessary implication, the element of revocability, it is a Will within the meaning of the relevant definition section. AIR 1957 Cal 631 (638).

(13A) Although a Will made by a member of a joint Hindu family cannot take effect on the testator's interest in the joint family property after his death even though the other coparceners have consented to such will, that is no ground for holding the will to be void ab initio and in its entirety so as to be regarded as non est. If there is any separate property of the testator, the will, if otherwise properly executed, must take effect with regard to such property. AIR 1950 East Punj 35 (38, 39)=ILR (1950) Punj 91.

(14) Will must be construed as a whole to give effect to manifest intention of testator. AIR 1966 Punj 266 (267)=67 Punj L R 1135 (DB) * * ILR (1967) Mys 44 (49). (Where the intention of transferor is to maintain absolute estate conferred on transferee but he simply adds some restrictions in derogation of the incidents of such absolute ownership, such restrictive clauses would be repugnant to absolute transfer and therefore void.)

(15) Where there are clear words of devise, it is not permissible for a Court to ignore them and hold that the document is not a will on the ground that the will was invalid or for the reason that even if the will had not been executed the same legal consequences would flow. For the purpose of construction of a document, the validity of the will or its clauses must be ignored. AIR 1953 Mad 740 (742, 743) = ILR (1953) Mad 1035 (DB).

(16) A document is a will if it contains specific words of bequest to come into effect after the death of the testator. Where the terms of the will are ambiguous and where the alleged words of devise are consistent with a testamentary disposition and also with a narrative, it is open to a Court on a reading of the entire document to hold that in the context the words are not words of disposition but only form part of a narrative. AIR 1953 Mad 740 (742) = ILR (1953) Mad 1035 (DB).

(17) Document whether will or declaration of successor — Document held to be a will, as the contents of the document clearly showed that the document was a legal declaration of the executant's intention with respect to his property which he desired to be carried into effect after his death. AIR 1965 Him Pra 62 (63).

(18) Document addressed to debtors of executant requesting them to repay the debts to his daughter S — Repayments if made during life-time of testator to S would have discharged their liabilities to him — Document held not a will but merely purported to authorise the daughter to recover the debts. AIR 1954 Nag 357 (359) = ILR (1954) Nag 558 (DB).

(19) Postponement of operation of document till after death of testator's wife does not prevent document from being will. AIR 1947 Pat 449 (453) (DB).

(20) A joint will is not unknown to the law. AIR 1947 Pat 449 (451) (DB).

(21) Where in executing a document there is no real animus testandi on the part of the executant and it is brought into existence for some collateral purpose the document cannot be regarded as a will. AIR 1947 Pat 449 (454) (DB).

(22) Where one part of the instrument is testamentary in its character, it can be presumed that the rest of it, if the language is capable of that construction, is intended to be testamentary also; and if there is nothing in the testamentary part of the document which is inconsistent with the supposition that the arrangements there made were to take effect at the death of the testator, the instrument may be taken to be a will. (1879) 4 Cal L Rep 401 (403) (DB).

(23) Deed in two parts—By first part management of property entrusted to devisee during lifetime of devisor — Second part providing for transfer of ownership on latter's death — Deed held amounted to will. AIR 1962 Assam 106 (107)=ILR (1962) 14 Assam 276 (DB).

(24) Whether man leaves one testamentary writing or several testamentary writings, it is the aggregate or the net result that constitutes his will and the intention of the testator must be gathered by reading all writings together. AIR 1931 Bom 533 (536) (DB).

(25) Validity of bequest is to be determined from testator's lawful disposing power at his death. AIR 1929 P C 121 (122, 123) = 56 Ind App 156.

(26) It is firmly established principle that the proponent of the will who should prove both execution and the disposing state of mind becomes also fastened with the liability to remove suspicious circumstances if any surround-

Section 2 — Note 7 (contd.)

ing the execution of the will. Generally speaking, the omission on the part of a testator to make a mention of his near and dear relations who in the ordinary course should have the objects of his bounty, is a suspicious circumstance. (1968) 1 Mys L J 510 (511).

(27) "Will"—Document inoperative as will may be valid authority to adopt. AIR 1925 P C 196 (198)=52 Ind App 305=48 Mad 614.

(28) Entry in wajib-ul arz — Whether it can be treated as will depends upon its construction with reference to surrounding circumstances. (1906) 28 All 488 (495, 496) (PC).

(29) The fact that in document provision is made for appointment of future trustee after the death of the present trustees, does not make the document a will. AIR 1927 Cal 756 (757) (DB).

(30) Definition of will in S. 2 (*h*) applies to will of a Muhammadan as well. (1968) 2 Andh L T 124 (128).

(31) A joint Will is a single testamentary instrument constituting or containing the wills of two or more persons and jointly executed by them; while mutual wills are the separate wills of two or more persons which are reciprocal in their provisions and executed in pursuance of contract on agreement between two or more persons to dispose of their property to each other or to third persons in a particular mode or manner—Revocation — Permissibility—Position under English and American law stated. AIR 1964 Mad 291 (294, 296, to 298) = (1964) 2 Mad L J 545.

(32) Joint will becomes operative immediately after death of any one testator so far as his properties are concerned—Operation is not postponed till death of all. AIR 1971 Mys 143 (143) =(1970) 2 Mys L J 551 (DB).

(33) The term will means the legal declaration of the intention of a tetator with respect to his property, which he desires to take effect after his death. Where certain formalities are required by statute for making a declaration regarding his intention then where those formalities are not complied with the document cannot constitute a valid will. AIR 1966 M P 251 (252) = 1966 Jab L J 227. [Nomination to provident fund by a member—Mere entry below a certificate directing the amount to be paid to person other than the nominee does not alter nomination already made—Such entry does not operate as a will.]

Illustrative cases

(34) One of the clauses of a will was in the following terms: "Upon my demise, my wife and my daughter-in-law will, in equal shares, get the properties, left by me but in all these properties, they will have life interest only. They will not be entitled to transfer the said properties by way of any gift or sale. On the demise of my wife, my younger (son) will get half-share of the properties left by me in absolute right. God forbid, if during the lifetime of my wife, my younger son dies, then the person or persons who will be the legal heirs of the said younger son of mine at the time of the death of my wife will get the said eight annas share in absolute right. On the demise of my daughter-in-law, the sons of my eldest son will get in equal shares the remaining eight annas share of my properties in absolute right" : *Held*, that these provisions clearly satisfied the requirements of the definition of a will as contained in S. 2, cl. (h). AIR 1938 Cal 290 (292, 293) (DB).

(35) A deed purporting to authorise the widow to adopt contained the following clause: "In the event of my having no son, my wife shall be the owner of the estate. If, however; my brother has a son, that son shall be the owner, but if it be found that the brother also begets no son. I hereby authorise my wife to adopt a boy from within the family and he shall then become owner, in my wife's stead" : *Held* this clause amounted to testamentary disposition within S. 2 (h). AIR 1937 All 377 (388, 389)=ILR 1937 All 292 (DB).

(36) Where the relevant portions of the document were as follows: "You shall yourself after my lifetime use and enjoy the two rooms built on the ground of the house Municipal No. 11 . . . . . I shall myself enjoy the rent in respect of those two rooms as long as I may be alive. You shall yourself use and enjoy after my lifetime that rent and that ground and the two rooms from son to grandson and so on in succession with power to gift, mortgage, exchange and sale. No one has any right to or interest in those rooms. To this effect is the gift deed document executed and given in respect of the aforesaid two rooms and their grounds" : *Held* that though in form it was a gift really it was a will. AIR 1924 Mad 605 (606) (DB).

(37) *A*, a Hindu, adopted a son and executed a document purporting to be a settlement providing inter alia that in cases the son and *A's* wife did not agree to live together after *A's* death, the wife should enjoy same land during her lifetime in lieu of maintenance. On disagreement between the son and the wife after *A's* death, wife separated and sued the son for the land, contending that as per settlement she was entitled to the land : *Held* on construction of the document, it was a will as the disposition in it was to take effect after *A's* death. (1889) 12 Mad 490 (492) (DB).

(38) A document was executed by a merely literate lady in Bengali. The first part of it related to the dedication of all the properties movable and immovable which belonged to the lady on the date the document was executed. The language of the document made it clear beyond any doubt that the dedication was to take effect immediately if it had not already taken effect. The second part of the document related to the appointment of shebaits : *Held*, that the mere mention of the word "will" would not make document a testamentary one if really it is not so. No doubt a document could be partly a will and partly of a non-testamentary character. But the second part could not be construed as a will. A shebait holds his office for his life. If he can alienate shebaitship, he can do so during his lifetime. The document could not therefore be construed as a will. One of the real tests of a valid will is whether it is revocable. The lady made no such reservation in the alleged will. After having laid down the line of succession to shebaitship it was not open to her to effect any change even if she wanted to do so. AIR 1948 Pat 341 (344) (DB).

(39) Shebaitship of a temple carrying with it a right to appropriate the income is property — 'Will' purporting to convey such shebaitship falls within the definition of will under S. 2 (h).

3. Power of State Government to exempt any race, sect or tribe in the State from operation of Act. — (1) The *[State Government] may, by notification in the [Official Gazette],† retrospectively from the sixteenth day of March, 1865, or prospectively, exempt from the operation of any of the following provisions of this Act, namely, sections 5 to 49, 58 to 191, 212, 213 and 215 to 369, the members of any race, sect or tribe in the *[State], or of any part of such race, sect or tribe, to whom the *[State Government] considers it impossible or inexpedient to apply such provisions or any of them mentioned in the order.

(2) The *[State Government] may, by a like notification, revoke any such order, but not so that the revocation shall have retrospective effect.

Section 2— Note 7 (contd.)
AIR 1967 Guj 214 (216, 217)=(1967) 8 Guj L R 281 (DB).

(40) Interest of mahant in property relating to endowment — Can be deemed to be property of mahant — Declaration by Mahant for disposition of such property — Amounts to will within S. 2 (h). 1962 All L J 609 (611, 612) (DB).

(41) Document called will not disposing of properties but only appointing successor to office (Mahant of matha) — Document does not constitute will. AIR 1962 Pat 481 (483)=ILR 41 Pat 379 (DB).

(42) Where the executants of a document spoke of having divided the property among their nephews and having treated their nephews as absolute owners of their respective shares, but no actual division of the property was made and there was no indication whatever of any division of it into shares, or of the allotment of any portion of the property to one of the nephews in exclusion of the rest, and what the executants were speaking of throughout the document was undivided shares and not shares divided by metes and bounds and they made it clear that this division into shares would come into effect after they died: *Held* that the document was a will. AIR 1947 Pat 449 (454) (DB).

(43) A document was styled a will. It deliberately broke the line of succession and contained, inter alia, the following posthumous directions of the executant: "If in case it is not possible for me to take the said boy in adoption during my lifetime, I have in order that my third wife *D* shall take *R* in adoption for me given authority under this will to my (third) wife the aforesaid *D*. The adopted son, namely, *R* who is so taken in adoption to me by my third wife shall like unto as my *auras* son take my properties and the hereditary office of the village munsif and enjoy them. *Held* that the words "take and enjoy" were clear words of devise, that the testamentary character of the document was established, that though not registered it was admissible in evidence and that power to adopt incorporated therein could be relied upon to sustain the adoption. AIR 1953 Mad 740 (743)=ILR (1953) Mad 1035 (DB).

(44) A document was styled deed of settlement and was registered as such. It conferred on the donee immediate title to the property subject to the limited right of enjoyment without rights of sale, gift or mortgage during the life-time of the donor. The donor had not expressly reserved his power of revocation. Held, that the fact that the donor did not reserve his right of revocation and curtailed his rights by way of sale, gift or mortgage all went to show that his intention was to transfer the interest in the property on the settlee and not to postpone it subject to his enjoyment during his life. The document clearly spoke from the date at which it was written and not a future date when the writer died. Though the settlor had not given possession to the donee the document clearly showed that there was immediate transfer of interest to the plaintiff. The document was, therefore, a deed of settlement and not a 'will.' 1958 Andh L T 570 (573).

(45) A railway employee, signed a declaration form nominating a certain person for receiving the Provident Fund money standing to his credit. The nomination ended with these words 'and I make this my will so far as regards such deposit.' Held, that the document was a combined nomination form and will : Held further, that it could not fail as a will on the ground that it was not capable of revocation. AIR 1951 Ajmer 42 (44).

(46) A Hindu executed an unregistered document calling it a will in favour of his wife to the effect : "I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner" : Held the document was not a will, but only a power to adopt. AIR 1922 P C 162 (163)=48 Ind App 482 = 44 Mad 733.

8. Conditional or contingent Will. — (1) A conditional or contingent will is one which depends for its operation upon the happening of a specified condition or contingency. If the condition fails, the will is inoperative and void thereafter. If a will is conditional only, it will be null on the contingency not happening even though the testator subsequently refers to it as his will and though after his death it be found in his writing desk. In fact such a will can also be revoked either by implication or by express words : Whether or not a will is to be regarded as contingent depends upon the intention of the testator. Courts will not regard a will as conditional or contingent unless the intention of the testator to make it so clearly appears either expressly or by necessary implication from the language of the will as a whole. Where it is doubtful whether the will is contingent upon the occurrence of an event the circumstances under which the will was executed or the language of the instrument may be considered. AIR 1960 Ker 1 (5) = ILR (1959) Ker 665 (FB).

Section 3 — Note 1

(1) A notification under S. 332 of Act 10 of 1865, (Section 3 of Act 39 of 1925) declared Oraons, (an aboriginal tribe in Chota Nagpur) exempted from the provisions of the Act, "provided that this notification shall not affect any person in regard to whose rights a decision contrary to its effect has already been given by a competent civil Court" : Held that the decision here meant is not some final decision such as would operate as res judicata but includes a decision under

(3) Persons exempted under this section or exempted from the operation of any of the provisions of the Indian Succession Act, 1865† under section 332 of that Act are in this Act referred to as "exempted persons".

[1865—S. 332 ; Devolution Act, 1920—S. 2 and Sch. I.]

[*] Substituted for "Provincial Government", or "Province" by A. L. O., 1950.

[†] Substituted for "Local Official Gazette" by A. O., 1937.

[‡] Repealed by this Act.

PART II

OF DOMICILE*

4. Application of Part. — This Part shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina.

[1865—S. 331.]

[*] As to law applicable on this subject to Hindus, Jains, Sikhs, Boudhas or Mohemadans, see the Citizenships Act, 1955 and Constitution of India, Arts. 5 to 10.

Domicile is a very difficult word to define. In common parlance the word is understood as meaning the place where a man lives or has his home. Halsbury's Vol. VI defines it thus "A person's domicile is that country in which he either has or is deemed by law to have his permanent home." Residence and particular intention constitute the principal elements of the concept of domicile. Domicile however should not be confused with nationality. There are three types of domiciles : (1) Domicile by births (S. 7) ; (2) Domicile by choice (S. 10) and (3) Domicile acquired by operation of law.

Section 2 — Note 1 (contd.)

appeal. AIR 1916 Pat 374 (374) = 1 Pat L Jour 225.

(2) Converts to Christianity — Native Christians of Coorg — Law applicable is Hindu Law, so far as succession to property is concerned. (1967) 9 Law Rep 678 (682) (DB) (Mys).

Section 4 — Synopsis

1. Hindu.
2. Brahmo.
3. Buddhist.
4. Sikh.
5. Indian Christian.
6. Persons married under the Special Marriage Act, 1872.

1. Hindu. — (1) The words Hindu, Muhammadan or Buddhist must be held to be religious distinctions and not national distinctions, for the two words "Muhammadan and Buddhist" are of only one meaning, and by analogy therefore "Hindu" must mean those of Hindu religion. (1874) 7 Mad HCR (App) 121 (122) (SB). (The fact that the majority of Native Christian still live in the Hindu manner does not affect the question)

[See also (1895) 19 Bom 783 (788) (DB).]

(2) A European does not become a Hindu merely because he professes a theoretical allegiance to to the Hindu faith. But if he resides long in India, abdicates his religion by a clear act of renunciation and adopts Hinduism by undergoing formal conversion, gives up along with Christianity his Christian name and deliberately assumes a Hindu name and marries a person who is a Hindu by race and religion and, cuts himself off from his old environments and takes to a Hindu mode of life, in such a case it should be concluded that he has become a Hindu. AIR 1928 Mad 1279 (1283) = 52 Mad 160.

(3) If a twice-born Hindu migrates to Burma and marries a Burmese woman, that in itself may not be sufficient to deprive him of his Hindu status under law. But if he has descendants who have been born and always lived in Burma and who have inter-married with its people then even though they may form a community of their own which has many traces of Hindu usages, if the usages and religion of the community are of a character so divergent from Hinduism the community cannot be regarded as Hindu. AIR 1922 P C 197 (201) = 48 Ind App 553 = 49 Cal 310 = 11 Low Bur Rul 155.

(4) The Act exempts the property of Hindus from the operation of the Act but there is no prohibition to a Hindu succeeding under the Act to the property of a Christian. (1886) 9 Mad 466 (471).

(5) The Act does not apply to a person professing to be Hindu though of mixed parentage. AIR 1914 Low Bur 201 (202) = 7 Low Bur Rul 362 (DB).

2. Brahmo.—(1) A Sikh or Hindu by becoming a Brahmo did not necessarily cease to belong to the Hindu community in which he was born. So also lapses from the standard of orthodoxy in the matter of diet and observation of ceremonials could not have that effect. (1904) 31 Cal 11 (32)=30 Ind App 249 (PC) * * AIR 1923 Cal 265 (267) = 49 Cal 1069.

3. Buddhist.—The Act does not apply to Chinese Buddhist. Buddhist law should be applied to the inheritance of Chinaman. AIR 1914 Low Bur 144 (144, 145) (DB).

4. Sikh. — (1) Under the old Succession Act Sikhs were included in the term "Hindu" and were excluded from the operation of the Act. (1904) 31 Cal 11 (32) = 30 Ind App 249 (PC).

5. Law regulating succession to deceased person's immoveable *and moveable property, respectively. — (1) Succession to the immoveable property in †[India] of a person deceased shall be regulated by the law of †[India], wherever such person may have had his domicile at the time of his death.

(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile ‡at the time of his death.

Illustrations

(i) A, having his domicile in †[India], dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in †[India]. The succession to the whole is regulated by the law of †[India].

(ii) A, an Englishman, having his domicile in France, dies in †[India], and leaves property, both moveable and immoveable, in †[India]. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of †[India].

[1865. S. 5.]

[*] Succession to immovable property of a deceased person is regulated by the lex loci rei sital, but succession to moveables is regulated by the law of the country in which he had his domicile at the time of his death, whether generally applicable to subjects of that country, or applicable only to foreigners domiciled therein.

[†] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1.4.1951.]

Section 4(contd.)

5. Indian Christian.—(1) A Hindu convert to Christianity is now governed solely by the Succession Act. AIR 1940 All 134 (138) = ILR (1940) All 100 (DB).

(2) Before the passing of the Indian Succession Act, 1865, Native Christian converts from Hindu religion were at liberty to renounce the Hindu law of succession or to adhere to it. Now the Act governs the succession in Native Christian families. (1880) 2 Mad 209 (211, 212) (DB) * (1886) 9 Mad 466 (471) * (1887) 10 Mad 69 (72) (DB).

[See also (1861-1863) 9 Moo Ind App 199 (239) = 19 E R 715 (PC).]

(3) A Christian woman while she was Buddhist adopted a girl as a daughter in Keittima form with a view to inherit but she subsequently became a Christian and died as a Christian intestate. It was held that the adopted girl could not inherit. AIR 1934 Rang 72 (74) = 12 Rang 184 (DB).

(4) The Succession Act (10 of 1865) is of universal application unless the person claiming to be excepted can show that by this or some other Act he is specifically excepted from the operation of its provisions and any convert setting up customs of inheritance must prove them to be different from the law of the new religion when there is no legislative enactment declaring the latter. (1895) 19 Bom 783 (788) (DB).

6. Persons married under the Special Marriage Act, 1872.—(1) Where a marriage has been solemnized between a Hindu man and a woman in 1918 under the Special Marriage Act, 1872, the rights of the parties cannot be governed by the Amending Act, 1923, but by the Original Act as the Amending Act has no retrospective effect. Questions as to succession and rights to property must be determined by or under no law other than the personal law of the parties as the mere declaration under the Act does not amount to a renunciation of the personal law of the parties. AIR 1928 Bom 74 (75).

(2) After the amendment of the Special Marriage Act, 1872, by Act XXX of 1923 persons professing Hindu, Buddhist, Sikh, or Jain religion can marry under the provisions of that Act and the succession to the property of the married persons or that of the issues of such marriage is governed by the Indian Succession Act, 1925: See S. 24 of Special Marriage Act, 1872.

Section 5 — Note 1

(1) The validity of a will which purports to dispose of immovable property in British India must be tested by the rules applicable to the execution of wills in British India. (1896) 20 Bom 607 (611) (DB) * (1869-70) 13 Moo Ind App 277 (310) (PC). (When lex loci is not known the law applicable is personal law.)

[See also (1862) 23 E R 328 (328)=1 Vern 85.]

(2) In English Courts, phrases which refer to national law of propositus are prima facie to be construed, not as referring to law which Courts of that country would apply in case of its own national domiciled in its own country in regard (where situation of property is relevant) to property in its own country, but to law which Courts of that country would apply to the particular case of the propositus, having regard to what in their view, is his domicile if they consider that to be relevant) and having regard to the situation of property in question (if they consider that to be relevant). AIR 1941 PC 139 (143).

(3) Succession has been used in the Act in the sense of beneficial succession to the property of the deceased. Administration of the property of the deceased would be concerned with the person who would be entitled or who can be allowed by the Court to gather it, to discharge the obligations of the estate and thereafter actually hand over the estate to such persons as are entitled to succeed to it, S. 5 (2) deals with succession and S 324 (1) deals with administration. The same is the meaning according to private inter-

6. One domicile only affects succession to moveables. — A person can have only one domicile for the purpose of the succession to his moveable property.

[1865—S. 6.]

7. Domicile of origin of person of legitimate birth.—The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Section 5 – Note 1 (contd.)

national law. AIR (1962) Bom 227 (228, 229) = 63 Bom L R 940.

(4) Land in British India is governed by lex loci and not by law of domicile of the temporary owner. AIR 1929 Bom 478 (479) (DB).

(5) Property owned by Hindu in England — Owner expiring in England—Succession to such property – Governed by lex situs in case of immovables and in the case of movables by the law of domicile. The domestic law of England must apply to the house if that property is considered by the English Law to be immovable. AIR 1964 Ker 244 (250, 251)=1964 Ker L T 252 (DB).

(6) Parsi resident in Baroda State dying leaving immovable property in British India — Succession to such property is governed by law prevailing in British India and not custom prevailing in Baroda State. AIR 1938 Bom 238 (240, 241).

(7) Property belonging to foreign State in British India—Right and title to such property following the possession of and succession to the throne of such State : Held, that although the property by reason of its being situated in British India, is subject to British Indian Territorial Law affecting it, the Courts in British India cannot go into the question of the right to succession to the foreign State. (1908) 35 Cal 777 (788) (SB).

[See also (1885) 11 Cal 17 (25) (DB).]

(8) Notification of Governor-General exempting native Christians in province of Coorg from operation of Act — Only those native Christians who have settled connection with the province of Coorg for certain legal purposes are exempted. (1967) 2 Mys L J 210 (221, 225) (DB),

(9) Where a domicile of origin is proved, it lies upon the person who asserts change of domicile to establish it and it is necessary to prove that the person who is alleged to have changed his domicile had a fixed and determined purpose to make the place of his new domicile his permanent home. (1967) 2 Mys L J 210 (225) (DB).

(10) The outstanding feature of a domicile is the permanent home of the individual — Permanent home of a person is the place "in which his habitation is fixed without any permanent intention of removing therefrom"— Acquisition of domicile of choice is the legal interference which is drawn from concurrence of evidence of physical fact of residence with evidence of mental fact of intention that such residence is permanent. (1967) 2 Mys L J 210 (226) (DB).

Section 6 — Note 1

(1) Though a man may have two domicils for some purposes he can have only one for the the purpose of succession to the personal estate. The necessity of such a maxim is obvious for it would be monstrously absurd "if it were possible that there should be a competition between two domicils as to the distribution of the personal estate. It could never possibly be determined by the casual death of the party at either. That would be most whimsical and capricious. It might depend upon the accident, whether he died in winter or summer, and many circumstances not in his choice, that never cou'd regulate so important a subject as the succession to his personal estate". (1801) 5 Ves 750 (786, 787) = 31 E R 839. (Per Arden M. R.)

(2) Domicile denctes the relation between a person and a particular territorial unit possessing its own system of law. The principal interests determined by a person's domicile concern status. ILR (1968) Andh Pra 101 (122) (DB).

(3) Domicile refers to the civil status of an individual while nationality refers to his political stvtus. Thus domicil and nationality are two quite different conceptions. A man may change his domicil without divesting himself of his nationality. Similarly there may be a change of nationality without a change of domicil. AIR 1953 Cal 530 (534)=ILR (1954) 2 Cal 226 (SB).

Section 7 — Note 1

(1) The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of the parents. It is not necessarily in itself, local, that is to say, merely the place of birth, but its determination seldom gives rise to practical difficulty. It clings to the person till he acquires a new one by choice, AIR 1916 Bom 167 (169) = 41 Bom 687 (DB).

(2) Domicile denotes the relation between a person and a particular territorial unit possessing its own system of law and principal interests determined by a persons domicile concern status such as legitimacy, adoption, marriage, succession etc., that is, matters which concern family and family property — Not all the underlying principles of private international law can be said to apply equally to all the countries. The matters have to be decided having regard to system of law which is applicable to particular place and circumstances. ILR (1968) Andh Pra 101 (122) (DB).

(3) Abandonment of domicil of origin — Evidence that domicil of origin is abondoned and a domicil of choice is accepted must be strong— Held, K, an Indian who was in England for 30 years and died there did not interd to discard domicil of origin. See Constitution of India; Article 5. AIR 1964 Ker 244 (247) = 1964 Ker L T 252 (DB).

(4) Person born in India of Indian parents — Taken over to Pakistan while minor in 1950— Return to India in 1953 on Visa as Pakistani National—Held to be a citizen of India. 1962 (1) Cri L J 256 (257) (All).

Illustration

At the time of the birth of *A*, his father was domiciled in England. *A's* domicile of origin is in England, whatever may be the country in which he was born.

[1865—S. 7.]

8. **Domicile of origin of illegitimate child.*** —The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

[1865—S. 8.]

[*] This is the only provision where a woman is recognised as conferring a domicile.

A woman's domicile otherwise determined by that of her father or of the husband.

9. **Continuance of domicile of origin.**—The domicile of origin prevails until a new domicile has been acquired.

[1865—S. 9.]

10. **Acquisition of new domicile.** — A man* acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Section 9 — Note 1

(1) The domicile of origin is to prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile and taking another as his sole domicile. (1801) 5 Ves 750 (787) = 31 E R 839.

(2) Law is very strongly inclined to retain domicile of origin. If person alleges that man had acquired domicile of choice, he must prove that that man had that intention. AIR 1916 Bom 167 (169) = 41 Bom 687 (DB) * (1935) 62 Cal 869 (876).

(3) A Halai Memon of Porebunder residing and carrying on business in Bombay who has not severed his connexion with Porebunder, would be governed by the law applicable to the Halai Memons in Porebunder (namely, the Hindu law) and not by that governing Bombay Memons. AIR 1918 Bom 39 (49) = 43 Bom 647 (DB).

(4) As a result of the provisions contained in the Indian Independence Act of 1947 a person who had originally the domicile of British India, unless he had subsequently acquired the domicile of some other country outside the ambit of the territories which were originally British India, would automatically acquire the domicile either of India or Pakistan. AIR 1953 Cal 530 (533) =ILR (1954) 2 Cal 226 (SB).

(5) Abandonment of domicil of origin — Evidence necessary to establish it must be strong — Held K, an Indian, who was in England for 30 years and died there did not intend to discard domicil of origin. AIR 1964 Ker 244 (247) = 1964 Ker L T 252 (DB).

(6) Presumption is in favour of continuation of existing domicile—Burden of proof is on him who alleges change — Intention is to be determined from owning immovables, residence etc. (1967) 2 Mad L J 334 (339, 340) (DB).

Section 10 — Note 1

(1) Whether man has abandoned his domicile of origin and acquired new domicile would depend on his residence and intention. (1935) 62 Cal 869 (876).

(2) Domicile can always be ascertained either by means of a legal presumption or from the known facts of the case. If a person who has no fixed place of residence, expresses his intention to settle at the place of his wife's parents and stops with those parents at times, that place can be said to be his domicile of choice. AIR 1928 Pat 375 (385) (DB).

(3) It is of the essence of the acquisition of a new domicile that the residence should be intended to be permanent, that is to say, a man making the choice should mean it to be final and definitely intend to end his life in the residence which he has thus chosen, in a new place or country. AIR 1916 Bom 167 (169) = 41 Bom 689 (DB) ** AIR 1953 Cal 530 (534) = ILR (1954) 2 Cal 226 (SB). (It must also be an intention of abandoning, the former domicile.)

(4) Domicile denotes the relation between a person and a particular territorial unit possessing its own system of law. The principal interests determined by a person's domicile concern status, that is matters which concern family and family property. Not all the underlying principles of private international law can be said to apply equally to all the countries. The matters have to be decided having regard to the system of law which is applicable to particular place and circumstances. ILR (1966) Andh Pra 101 (122) (DB).

(5) The expression of intention or animus of a person intending to acquire domicile in India can be regarded as being the final intention to reside in India permanently and adopt the Indian domicile unconditionally and without reservation when the intention is contingent on the fulfilment of a condition that is not fulfilled. AIR 1953 Cal 530 (535, 536) = ILR (1954) 2 Cal 226 (SB).

(6) The factum of residence necessary to acquire a new domicile need not be long in point of time. AIR 1953 Cal 530 (534)= ILR (1954) 2 Cal 226 (SB).

(7) Domicile — Presumption is in favour of continuation of existing domicile — Burden of proof is on him who alleges change — Intention

Explanation.—A man is not to be deemed to have taken up his fixed habitation in †[India] merely by reason of his residing there in ‡[the civil, military, naval or air force service of Government], or in the exercise of any profession or calling.§

Illustrations

(i) A, whose domicile of origin is in England, proceeds to †[India], where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in †[India].

(ii) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A has acquired‡ domicile in Austria.

(iii) A, whose domicile of origin is in France, comes to reside in †[India] under an engagement with the Central Government for a certain number of years. It is his intention to return to France, at the end of that period. He does not acquire a domicile in †[India].

(iv) A, whose domicile is in England, goes to reside in †[India] for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in †[India], however long the residence may last.

(v) A, having gone to reside in †[India] in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in †[India]. A has acquired a domicile in †[India].

(vi) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in †[India].

(vii) A, having come to Calcutta in the circumstances stated in the last preceding illustration continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in †[India].

[1865—S. 10.]

[*] Does this term exclude a woman, a company, an association or a body of persons, whether incorporated or not?

[†] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1.4.1951].

[‡] Substituted for 'His Majesty's civil, military, naval or air force service" by A.L O., 1950 [26.1 1950].

[§] Even if he be following the profession or calling with the requisite intention.

11. Special mode of acquiring domicile in India.—Any person may acquire a domicile in *[India] by making and depositing in some office in *[India], appointed in this behalf by the †[State Government], a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in *[India] for one year immediately preceding the time of his making such declaration.

[1865—S. 11]

[*] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1.4.1951].

[†] Substituted for 'Provincial Government' by A. L. O., 1950.

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is to be determined from owning immovables, residence etc. (1967) 2 Mad L J 334 (339, 340).

(8) A, a Scotchman, entered into East India Company's service and died in 1878 after the Company's Government was taken over by Crown — Will by A good under Scotch law but invalid under Succession Act — Application for probate: Held, A acquired an Anglo-Indian domicile and as the will was not attested, probate could not be granted. (1879) 4 Cal 106 (115).

(9) Permanant residence in Bombay does not necessarily import the Mohamedan law of succession for one whose ancestors were converted from Hinduism. Severance from domicile of origin and permanent residence in Bombay would, in cases of persons falling within the purview of this Act, effect change of domicile and with it, change of law but it would not change the law of succession for Hindu or Mahomedans. AIR 1918 Bom 39 (49) = 43 Bom 647 (DB).

Section 11 — Note 1

(1) Section 11 merely provides a means of acquiring Indian domicile for the purposes of succession under the Act and the making of a declaration under S. 11 would not affect the declarant's domicile for purposes other than succession, e. g., divorce. The mode of acquiring domicile under S. 11 for the purposes of succession cannot be applied to domicile for the purposes of divorce. AIR 1943 Lah 260 (264, 265)= ILR (1943) Lah 765 (SB).

(2) The domicile to be acquired under S. 11, is to be acquired only for the purpose of the Act,

12. **Domicile not acquired by residence as representative of foreign Government, or as part of his family.**—A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.

[1865 – S. 12.]

13. **Continuance of new domicile.**—A new domicile continues until the former domicile has been resumed* or another has been acquired.

[1865 –S. 13.]

[*] Slighter evidence would suffice to show that a man intends to abandon his acquired domicile and to resume his domicile of origin than would be required to show that he means to abandon his domicile of origin and to acquire a new domicile.

14. **Minor's domicile.**—The domicile of a minor follows the domicile of the parent* from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married,† or holds any office or employment in the service of ‡[Government], or has set up, with the consent of the parent, in any distinct business.§

[1865—S. 14.]

[*] That is to say father or mother according as the minor is a legitimate or illegitimate child.

[†] For on marriage he founds, as a rule, a separate establishment, and is treated, in respect of domicile, as sui juris.

[‡] Substituted for "His Majesty".

[§] Then he becomes emancipated and capable of acquiring a domicile of his own.

15. **Domicile acquired by woman on marriage.**—By marriage a woman acquires the domicile of her husband* if she had not the same domicile before.

[1865—S. 15]

[*] And by re-marriage she acquires the domicile of her second husband.

16. **Wife's domicile during marriage.**—A wife's domicile during her marriage follows the domicile of her husband.

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in which the section itself occurs and by the provisions of this Act, it is only domicile for succession to movable property for which S. 11, provides. AIR 1945 Sind 171 (177)=ILR (1946) Ker 1 (SB) ** AIR 1945 Sind 152 (161). (Declaration under S. 11 not conclusive for purposes of Divorce Act, 1869.)

him who alleges change — Intention is to be determined from owning immovables, residence etc. (1967) 2 Mad L J 334 (339, 340) (DB).

(4) Hindu widow of French Indian subject becoming absolute owner of her husband's property on his death, in accordance with French law prevailing in French territory — Migration of widow to British territory and acquisition of British Indian domicile: Held that character of her estate did not change unless she adopted system of law prevalent in that part of British India. (1901) 24 Mad 650 (651, 652) (DB).

Section 15 — Note 1

(1) A woman on her marriage, whatever the domicile of her origin might have been, acquires the domicile of her husband. It seems as if a married woman is under a sort of a disability in the matter of domicile and the law imputes a domicile to a woman on her marriage, and she automatically acquires the domicile of her husband. AIR 1959 Raj 133 (134) = ILR (1959) 9 Raj 553.

(2) The domicile of a widow is the same as her husband's unless she is shown to have changed it since the death of her husband. (1895) 19 Bom 697 (699) (DB) ** AIR 1965 J & K 83 (84, 85) = 1965 Kash L J 85 (DB).

(3) Presumption is in favour of continuation of existing domicile — Burden of proof is on

Section 16 — Note 1

(1) A married girl cannot change her domicile at her will, so long as the marriage subsists, and where she is also a minor the only person who can decide such questions on her behalf, during her minority, is her husband who is her legal guardian. AIR 1954 All 456 (456) = ILR (1955) 2 All (652) (DB).

Exception.—The wife's domicile no longer follows that of her husband if they are separated* by the sentence of a competent Court,† or if the husband is undergoing a sentence of transportation‡

[1865—S. 16.]

[*] This would cover both a sentence of divorce or one of judicial separation. Mere living apart separately by consent or under a deed of separation would not fall under 'Exception'.

[†] Does not include a 'foreign Court'.

[‡] What if he runs away from his creditors, or absconds to avoid a lesser sentence, to a foreign country?

17. Minor's acquisition of new domicile.—Save as hereinbefore otherwise provided in this Part, a person cannot, during minority, acquire a new domicile.

[1865—S. 17.]

18. Lunatic's acquisition of new domicile. — An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person*.

[1865—S. 18.]

[*] This necessarily means the father where the lunatic is male or the Committee appointed under the Lunacy Act, 1912 or if the lunatic is a married woman, her husband.

19. Succession to moveable property in India in absence of proof of domicile elsewhere.—If a person* dies leaving moveable property in †[India], in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of †[India].

[1865—S. 19.]

[*] Does this include a company, an association, a body of persons, incorporated or not, or for that matter a woman?

[†] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1-4-1951].

PART III

MARRIAGE

20. Interests and powers not acquired nor lost by marriage.—(1) No person shall, by marriage, acquire any interest in the property* of the person whom he or she marries or become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

(2) This section—

(a) shall not apply to any marriage contracted before the first day of January, 1866;

Section 19 — Note 1

(1) Plaintiff's husband, a Goanese born in Goa settled in Bombay and carried on business for over fifty years till his death. During this period he visited Goa a very few times though he intended to retire and spend his closing years there. He made a will in Bombay whereby he bequeathed Rs. 7, a month to plaintiff for her life. In a suit by plaintiff for a moiety of the estate under Portuguese Law — Held that plaintiff's husband had acquired a domicile of choice in Bombay and that therefore the devolution of his estate was governed by the Act. AIR 1916 Bom 167 (177) = 41 Bom 687 (DB).

(2) The onus is on the person who attack a settlement, to show conclusively that nationality of the settlor was foreign and if they succeed in doing so the onus is then on the persons supporting the settlement to show that the settlor had acquired a domicile in British India and that his estate should be administered according to law prevailing in British India. (1905) 32 Cal 631 (638).

Section 20 — Note 1

(1) Sections 4 and 44 (now Ss. 20 and 21 respectively) read together should be understood as laying down a general rule as to the immediate effect of marriage in respect of movable property belonging to each or either of the married persons not comprised in an ante nuptial settlement, and not as laying down a rule intended to affect the law of succession. (1896) 23 Cal 506 (512).

(2) Section 4 contains the lex loci of India. It does not operate upon the movable property

(b) shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed at the time of the marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion.†

[1865—Sections 4, 331; The Married Women's Property Act, 1874—S. 2.]

[*] The section does not operate upon moveable property of parties to a marriage where either of them has a non-Indian domicile.

[†] See the Hindu Marriage Act, 1955 (25 of 1955) for law as to marriages of Hindus, Jains, Sikhs, Boudhas, Brahmos, Arya Samajists and all those who are not born as Hindus but are brought up as such.

21 Effect of marriage between person domiciled and one not domiciled in India.—If a person whose domicile is not in *[India] marries in *[India] a person whose domicile is in *[India] neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire† thereby if both were domiciled in *[India] at the time of the marriage.

[1865—S. 44.]

[*] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1.4.1951].

[†] The section lays down that where either of the parties has an Indian domicile, all his or her rights, as regards the other's property, whether moveable or immoveable, are to be governed by the territorial law (lex loci) of India. The rule modifies the general law of the Nations (jus gentium). Jus gentium is bounded not merely in the convenience but in the necessities of the nations.

22. Settlement of minor's property in contemplation of marriage.—(1) The property* of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from †[India], with the approbation of the High Court.

(2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866 or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina ‡

[1865—Ss. 45; 331.]

[*] Whether moveable or immoveable.

[†] Substituted for "the States" by Act III of 1951, S. 3 and Sch. [1.4.1951].

[‡] Succession amongst Hindus, Jains, Boudhas or Sikhs is now governed by the Hindu Succession Act, 1956.

Section 20—Note 1 (contd.)

of parties not having an Indian domicile. (1876) 1 Cal 412 (420).

(3) Section 4 of 1865 Act (now S. 20) has nothing to do with power of married women to contract. AIR 1938 Cal 436 (489) = ILR (1938) 2 Cal 233.

(4) Under marriage settlement some property was vested in the wife without power of alienating the same. Wife and husband executing pronote jointly — Plaintiff seeking to recover his debt from the property vested in the wife under marriage settlement — Held operation of the clause in the settlement prohibiting alienation of property vested in the wife was not prevented by S. 4 of old Act. (1874) 13 Beng L R 383 (389) (DB).

(5) Where parties having the same domicile marry during a temporary sojourn in a foreign country and do not evince any intention to change their domicile the interest which they acquire in the movable property of each other is that interest given them by law of the country wherein they are domiciled at the time of the marriage (1876) 1 Cal 412 (418).

(6) In a proceeding for judicial separation between parties governed by the Act, wife is not entitled to security for costs from husband except under special circumstances. (1880) 5 Cal 357 (362) (DB).

[See also (1886) 9 Mad 12 (14).]

Section 21 — Note 1

(1) Ss. 4 and 44 of old Act (now Ss. 20 and 21) deal with different subjects. The former declares the general lex loci of India; the second lays down a special rule to govern a particular case. It is not a modification of the lex loci but a declaration of the law in a particular case. (1876) 1 Cal 412 (421).

(2) This section lays down a general rule as to the immediate effect of marriage in respect of movable property belonging to each or either of the married persons not comprised in an ante-nuptial settlement and does not lay down a rule intended to affect the law of succession. (1898) 23 Cal 506 (512).

PART IV

OF CONSANGUINITY

23. Application of part.—Nothing in this Part shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi.*

[1865 — S. 331]

[*] See Ss. 50 to 56 infra as to Rules of Succession to Parsi intestates.

24. Kindred or consanguinity.*—Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

[1865 — S. 20.]

[*] Word has been derived from the latin word 'consanguineous' which meant 'related by the same blood'. In the civil law of the continent of Europe "consanguinei" were brothers and sisters descended from the same father as opposed to "uterini" or brothers and sisters descended from the same mother. Consanguinity now means relationship by descent, either lineally, as in the case of father and son or collaterally by descent from a common ancestor e. g., cousins. Section includes both the descents.

Kindred means relation by blood, including half-blood.

Kindreds are of two kinds — Lineal and collateral.

The relationship contemplated in this chapter is that flowing from lawful wedlock.

The definition of kindred in this section does not apply to Hindus (including those governed by the Hindu Law, shastric or otherwise) as it excludes those related by marriage. See also S. 23 supra.

25. Lineal consanguinity. — (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other,* as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.

[1865— S. 21.]

[*] Adopted sons or for that matter adopted father etc., would seem to be outside the intendment of this provision. That would be so as there is material difference in the concept of adoption amongst the Hindus and the non-Hindus.

Section 24 — Note 1

(1) The definition of "kindred" in this section is based upon the principles of English statute of distributions (22 and 23, Charles II, Ch. 10) and a gift to a next-of kin under the English law does not include a husband or a wife. But this definition is not applicable to Hindus and a bequest made by a father to the would-be-wife of his son may be deemed to be a bequest to a person described as standing in a particular degree of kindred to his son. (1912) 39 Cal 87 (97, 98, 100) (DB).

(2) The Act speaks of certain relations and these relations are those which the law recognizes namely those flowing from lawful wedlock. Where therefore, a person governed by the Act claimed as a nephew under a will left by his mother's sister born of illegitimate wedlock, it was held that he was not her relation within the Act. (1906) 30 Bom 500 (504) = AIR 1919 Upp Bur 3 (5) = 3 Upp Bur Rul 128. ('Lineal descendants' mean descendants born in lawful wedlock.)

[See also (1873) 11 Beng L R (App) 6 (8).]

Section 25 — Note 1

(1) Where the descent is by lineal consanguinity one may call it a lineal descent and the person so descending is a lineal descendant. But where relationship is by collateral consanguinity, one may be a descendant of the other but he cannot be said to be lineally descended. AIR 1956 Raj 30 (32) = ILR (1955) 5 Raj 964 (FB).

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26. Collateral consanguinity.—(1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor,* but neither of whom is descended in a direct line from the other.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is necessary to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, a degree being allowed for each person, both ascending and descending.

[1865 — S. 22.]

[*] e.g. brothers, sisters or cousins — Legitimate and not illegitimate, of course Collateral relations are those who spring from one and the same ancestor, who is the stirpes i.e. root from which the retations spread out. When therefore property is given to the descendants or relations of two or more persons, question frequently arists whether the donees are to take it per stirpes i.e. per branch, as representatives of their respective ancestors (descending from common ancestor) or per capita i. e. per head, as forming one class as a whole each taking an equal share.

27. Persons held for purpose of succession to be similarly related* to deceased.—For the purpose of succession, there is no distinction—

(a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or

(b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or

(c) between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

[1865 — S. 23.]

[*] The section abolishes the distinction between the whole and half-blood for the purposes of succession to immoveable property.

28. Mode of computing of degrees of kindred.— Degrees of kindred are computed in the manner set forth in the table of kindred set out in Schedule I.

Illustrations

(i) The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle. and another to the cousin-german, making in all four degrees.

(ii) A grandson of the brother and a son of the uncle, i.e., a great nephew and a cousin-german, are in equal degree, being each four degrees removed.

(iii) A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.*

[1865 — S. 24]

[*] As to the meaning in a will of the terms "cousin", "first cousin", "cousins-german" and "second cousin", see S. 99, infra. The words in these illustrations probably have the same meaning.

Section 26 — Note 1

(1) Collateral consanguinity is when two persons are connected by a descending line which is not a straight line. Where the relationship is by collateral consanguinity one may be a descendant of the other but he cannot be said to be lineally descended. AIR 1956 Raj 30 (32) =ILR (1955) 5 Raj 964 (FB).

Section 27 — Note 1

(1) According to S. 27, the policy of the law seems to be to do away with the distinction which at one time was being made between the full blood and the half blood. The law now makes no distinction between brothers of the full blood and brothers of the half blood and they stand on the same footing in matters of succession. AIR 1958 Madh Pra 133 (134).

Section 28 — Note 1

(1) The method of computing the degrees of kindred relationship given in S. 28 read with Sch. I thereof does not apply to Hindus. In the case of Hindus, the usual mode of computation of the degrees of relationship is to calculate the degrees from and inclusive of the deceased in the case of ascendants and descendants of the deceased, and from and inclusive of the common ancestor in the case of descendants of the common ancestor. AIR 1954 Raj 243 (244, 245) (DB).

PART V

INTESTATE SUCCESSION

CHAPTER I. — Preliminary

29. Application of part.—(1) This Part shall not apply to any intestacy occurring before the first day of January, 1866, or to the property of any Hindu,* Muhammadan, Budhist, Sikh or Jaina.

(2) Save as provided in sub-section (1) or by any other law for the time being in force, the provisions of this Part shall constitute the law of †[India] in all cases of intestacy.

[1865 — Ss. 2, 331.]

[*] As to law of intestate succession among Hindus (which term includes Jains, Sikhs, Buddhists, Neo-Buddhists and others who are brought up as Hindus though not born as such) see the Hindu Succession Act 1956.
This part would now apply to Parsi intestate succession as well since the Parsi Intestate Succession Act, 1865, has been repealed by this Act. For rules in regard to succession to a Parsi intestate see Ss. 50 to 56 infra.

[†] Substituted for "the States" by Act IV of 1951, S. 3 & Sch, [1.4.1951]

Section 29 — Synopsis

1. Buddhist.
2. Indian Christians.
3. Jews.
4. Hindus.

1. Buddhist. — [1] Chinese Budhist is a Buddhist within the Act and as regards succession and inheritance to the estate of a Chinese Buddhist dying intestate in Burma the Chinese customary law is applicable. AIR 1939 Rang 291 (293) (DB) ✠ AIR 1932 Rang 59 (60) (DB). (AIR 1927 Rang 265 (FB) and AIR 1930 Rang 81 (FB), Dissented from) ✠ AIR 1914 Low Bur 144 (144)=8 Low Bur Rul 222 (DB).

[But see AIR 1930 Rang 81 (105) = 8 Rang 57 (FB).

(2) Where a Buddhist woman adopted a girl as daughter in the keittima form with a view that the girl may succeed her but the woman subsequently became Christian and died as a Christian intestate it was held that the adopted girl could not inherit. AIR 1934 Rang 72 (74) =12 Rang 184 (DB).

2. Indian Christians. — (1) Hindu convert to Christianity is governed solely by the Act and cannot elect to be under Hindu law. AIR 1922 P C 14 (17)=48 Ind App 381=43 All 525 ✠ AIR 1940 All 134 (138) (DB).

(2) Where the parties have acquired a certain status on the foot of a relationship which has been sanctified by the existing law (the Hindu law in this case) it cannot be nullified nor impaired in any manner by the coming into force of the Act which withholds such a status from persons similarly related. There are no words in the Act which limit the relation contemplated therein to relations which are legitimate according to christian law. The relations contemplated in the Act are those which are recognised by the law governing the parties at the time the relationship came into being, and that law may also be the Hindu law. AIR 1959 Mad 180 (181). (Christian of Pudukotah State governed by Hindu law in matters of successions and marriage—Son born to him by second wife is a legitimate issue—He cannot be bastardized by subsequent application of Succession Act to that State.)

(3) A party can prove that there is custom of adoption among Christians in Punjab so as to change rule of succession laid down in this Act. S. 2 of the Act makes exception in case of local laws. S. 5 of the Punjab Laws Act provides an exception. AIR 1959 Lah 230 (232).

(4) The Punjab Laws Act of 1872 is covered by the expression "any other law for the time being in force" to be found in S. 29 (2) of this section. AIR 1956 Him Pra 17 (18).

(5) The words "any other law for the time being in force" in sub-s. (2) should be read as saving the customary law of the Garos. Therefore a case of succession among Garos whether Christian or non-Christian, should properly be decided by application of their customary law, provided the requisites essential for proof of a valid custom having the force of law are established. (1950) 54 Cal W N (2 D R) 14 (28, 30) (DB).

(6) The Travancore Christian Succession Act 2 of 1092 has not been repealed by reason of the introduction of the Succession Act into the Travancore-Cochin State by the Part B State (Laws) Act 1951. Hence where the deceased has a brother, his sister's sons cannot claim a share in his estate because they are not his heirs, in the circumstance, under the Travancore Act. AIR 1957 Trav-Co 1 (2) (DB).

3. Jews.—(1) Part V of Succession Act applies to Jewish community in Calcutta. AIR 1931 Cal 560 (562)=58 Cal 761.

4. Hindus.—(1) The Act does not apply to an intestate succession in the case of a deceased who though of mixed parentage professed Hinduism. AIR 1914 Low Bur 201 (202)= 7 Low Bur Rul 362 (DB).

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30. As to what property deceased considered to have died intestate.*— A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect,

Illustrations

(i) A has left no will. He has died intestate in respect of the whole of his property.

(ii) A has left a will, whereby he has appointed B his executor; but the will contains no other provision. A has died intestate in respect of the distribution of his property.

(iii) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(iv) A has bequeathed 1,000 rupees to B and 1,000 rupees to the eldest son of C, and has made no other bequest; and has died leaving the sum of 2,000 rupees and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000 rupees.

[1865 — S. 25.]

[*] A person is said to die intestate, in the strict sense of the term, when he leaves no will; but he is said to die intestate, wholly or partially, if he leaves a will if he does not dispose of his property at all, or only disposes of part of it, so that the whole or the part devolves on his next-of-kin. Some authors also state that a person dies intestate if dies leaving a valid will but does not appoint an executor.

CHAPTER II

RULES IN CASES OF INTESTATES OTHER THAN PARSIS

31. Chapter not to apply to Parsis.—Nothing in this Chapter shall apply to Parsis.*

[*] For Rules in Cases of Parsi Intestates, see Ss. 50 to 56 infra.

32. Devolution of such property. — The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred* of the deceased, in the order and according to the rules hereinafter contained in this Chapter.

Explanation. — A widow is not entitled to the provision hereby made for her if, by a valid contract made before her marriage,† she has been excluded from her distributive share of her husband's estate.

[1865—S. 26.]

[*] See S. 24 supra.

[†] That is to say by antenuptial settlement.

Section 30 — Note 1

(1) A private individual, who attempts by gift or will to make property inheritable otherwise than the law directs is assuming to legislate and the gift must fail and the inheritance takes place as the law directs. A man cannot create a new form of estate and alter the line of succession allowed by law for the purpose of carrying out his own wishes or views of policy. (1872) 9 Beng L R 377 (394, 395) (PC).

(2) This section provides that a man is considered to be intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect but this does not destroy the rule of survivorship any more than it extends right on intestacy to property in which intestate had a life estate. (1907) 31 Bom 25 (33) (DB).

(3) There is a presumption that the testator did not intend to die intestate in whole or in part. If the scheme of the testator in the will shows the clear intention of the bequest effect will be given to that intention even in the absence of express words. AIR 1956 Hyd 153 (158) (DB).

(4) *A* made will devising the estate to *R*. *R* died before *A*. On *A's* death he not having made any bequest or devise to any other person was held to have died "intestate". (1880) 4 Bom 537 (544) (DB).

(5) Where testator makes a will with respect to a part of his property, he dies intestate with regard to his other property and, therefore, person appointed his executor cannot be his representative with regard to his other property. AIR 1929 Lah 546 (546) (DB).

(6) Where some dispositions in a will were found to be invalid and could not be given effect to, with regard to the residuary property there was intestacy. (1908) 31 Mad 517 (522) (DB).

(7) Surplus income of a trust estate directed to be accumulated for a period longer than twenty-one (the maximum period for which accumulation can be directed by will) years after paying an annuity to testator's niece for her life—Held that the surplus income from the expiration of twenty-one years to the death of the niece devolved as on an intestacy. (1900) 2 Ch 541 (547, 548).

(8) See also S. 117, Succession Act.

Section 32 — Note 1

(1) Explanation—Where a testator had given to his wife that provision which he meant to be

33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred. — Where the intestate has left a widow—

(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two thirds shall go to his lineal descendants, according to the rules hereinafter contained;†

(b) *[save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.

[1865—S. 27.]

[*] Inserted by the Indian Succession (Amendment) Act, 1926 (XL of 1926), S. 2.

[†] This division of heirs seems to correspond to that prevailing among the Muhammadans—as sharers and residuaries.

*[33A. Special provision where intestate has left widow and no lineal descendants.—(1) Where the intestate has left a widow but no lineal descendants and the nett value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.

(2) Where the nett value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of section 33 as if it were the whole of such intestate's property.

Section 32 — Note 1 (contd.)

a satisfaction for any claim she might have against the other objects of his bounty, if by any accident those objects should be unable to claim the benefit of that exclusion, no other person could set it up against the widow. (1816) 30 E R 1038 (1041) = 5 Ves 332.

Section 33 — Note 1

(1) Where a wife had an inchoate right to dower at the time when the old Act was passed she is not deprived of her right by virtue of this Act. S. 27 (now S. 33) which provides what property a wife is entitled to in the event of her husband dying intestate does not either expressly or impliedly deprive her of any other provision to which she was entitled at the time of the passing of that Act. (1881) 6 Cal 794 (806) (DB).

(2) A 'lineal descendant' as the term is used in S. 27 (now S. 33) in the Act is the offspring of a lawful marriage and not the offspring of a union which is not that of husband and wife. AIR 1919 Upp Bur 3 (5)=3 Upp Bur Rul 128 ** AIR 1931 Cal 560 (562)=58 Cal 761.

(3) Clause (c) — Under English Law where a person dies intestate having a widow and there are no persons who answer the charater of next-of-kin to him, the widow takes one moiety of his personal estate and the Crown is entitled to the other half. (1836) 53 E R 86 (86) = 8 Sim 214.

(4) Man who is married in accordance with provisions of Special Marriage Act, 1872 getting married a second time in accordance with Hindu rites during lifetime of first wife—On death of the man, his property devolves on both the widows and his lineal descendants — Term "widow" in S. 33 of Succession Act would also include both the widows. AIR 1972 All 531 (533, 534)=1972 All W R (HC) 796.

(5) *A* was married to *B* under the Special Marriage Act (1872). At that time *B* had a son *C* by a previous Hindu wife. On *B*'s death *A* claimed that she was the sole heir of property left by *B* under the Act. It was held that *C* was a lineal descendant within S. 33 and hence *A* was entitled to 1/3 share only in *B*'s property. AIR 1952 All 214 (214).

Section 33-A — Note 1

(1) Section 33-A (5) (b) is an independent clause and is not part of S. 33-A (5) (a) and does not govern the three clauses mentioned in S. 33-A (5) (a). Section 33-A, therefore, does not apply to an Indian Christian and the persons specified in S. 33-A (5) (a) (ii) and (iii) even if they died intestate in respect of all their property. AIR 1945 Mad 47 (48).

(4) The nett value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.

(5) This section shall not apply—

(a) to the property of—

(i) any Indian Christian,

(ii) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or

(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act,† 1872 regulated by the provisions of this Act;

(b) unless the deceased dies intestate in respect of all his property.]

[*] Inserted by the Indian Succession (Amendment) Act, 1926 (XL of 1926), S. 3.

[†] Now see the Special Marriage Act, 1954 (XLIII of 1954), S. 21.

34. Where intestate has left no widow, and where he has left no kindred. — Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the *[Government].

[1865. S. 28.]

[*] Substituted for "Crown" by A. L. O. 1950.

35. Rights of widower. — A husband surviving his wife* has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.

[1865—S. 43.]

[*] Suppose a decree nisi has been passed in a divorce suit, and husband or the wife dies before a decree absolute could be or has been passed, would the surviving party to suit be a widower or a widow for the purposes of this section? What would be the status of the surviving? where at the time of death the parties were living separately either by consent or under a decree for judicial separation?

DISTRIBUTION WHERE THERE ARE LINEAL DESCENDANTS.

36. Rules of distribution. — The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40.

[1865—S. 29.]

Section 34 — Note 1

(1) Standing Orders of Board of Revenue, Madras, Order No. 197 (5) — Sovereign takes properties of all persons who die without heirs and intestate by escheat—Collector has power to issue notification directing claimants to such properties to prefer and establish their claims, under Regulation VII of 1817, cls. 6 to 9 read with Standing Order 197 (5). 1966 Ker L J 564 (566, 567).

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Section 35 — Note 1

(1) Under the Act the husband can only succeed to half of the wife's property in case his wife dies intestate leaving no lineal descendant. But in the absence of the next-of-kin, the husband would be entitled to the whole of the property as her heir. AIR 1925 Mad 1110 (1111).

(2) Divorced wife—Marriage between husband and wife dissolved by decree — At date of decree wife was entitled to some reversionary share in certain estate from her father of which no settlement was made prior to her marriage but which was subject to postnuptial settlement. Subsequent to their judicial separation, share fell into possession but divorced wife died before she could recover possession: Held, that the husband's rights in respect of that share ceased on the dissolution of the marriage and he was not entitled to recover the same. (1867) 4 Eq 162 (170).

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37. **Where intestate has left child or children only.**—Where the intestate has left surviving him a child or children,* but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children†.

[1865—S. 30.]

[*] 'Child' here would probably be held to mean a child legitimate according to the law of the country where its parents were domiciled at the time of his birth.

[†] The distribution would be per capita.

38. **Where intestate has left no child, but grandchild or grandchildren.**—Where the intestate has not left surviving him any child but has left a grandchild or grandchildren and no more remote* descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is one, or shall be equally divided among all his surviving grandchildren.†

Illustrations.

(i) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grandchildren will have one-ninth.

(ii) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Marry.

[1865—S. 31.]

[*] Does this imply 'how low so ever'?

[†] This means whether the grandchildren are by one son (or daughter) or by different sons (or daughters) the distribution would be per capita and not per stirpes.

39. **Where intestate has left only great-grand-children or remoter lineal descendants.** — In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

[1865—S. 32.] [Cf. Hindu Succession Act (1956), Ss. 10, 11, 12.]

40. **Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.**—(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Section 37 — Note 1

(1) The word "child" in this Act does not include an illegitimate child. AIR 1931 Cal 560 (562)=58 Cal 761 ** AIR 1941 Rang 33 (34) = 1940 Rang L R 654 (DB).

(2) According to the rules of succession laid down under the Act an adopted child is not an heir entitled upon an intestacy to inherit the estate of his deceased adoptive parent. AIR 1934 Rang 72 (74) = 12 Rang 184 (DB).

Illustrations

(i) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(ii) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild, and the remaining one-ninth is equally divided between the two great-grandchildren.

(iii) A has three children, John, Mary and Henry; John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate. One third of his property is allotted to Henry, one-third to Mary's child, and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(iv) A has two children, and no more, John and Mary. John dies before his father, leaving his wife pregnant. Then A dies leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and the Posthumous child.

[1865—S. 33.] [Cf. Hindu Succession Act (1956), Ss. 10, 11, 12].

DISTRIBUTION WHERE THERE ARE NO LINEAL DESCENDANTS

41. Rules of distribution where intestate has left no lineal descendants. — Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 42 to 48.

[1865—S. 34.]

42. Where intestate's father living. — If the intestate's father is living, he shall succeed to the property.

[1865—S. 35.] [Cf. Hindu Succession Act, 1956, S. 4 and Sch., Pt. II.]

Note.— Father under the Hindu law of succession is a second class heir but mother is a class I heir taking a share along with the son, daughter etc., of the deceased.

43. Where intestate's father dead, but his mother, brothers and sisters living. — If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration

A dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth and Mary, the sister of half blood, takes one-fourth.

[1865—S. 36.]

Note.—Mother under the Hindu law of succession excludes the brothers and sisters of the deceased that is to say she is not a simultaneous heir with brothers and sisters of the deceased.

44. Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.—If the Intestate's father is dead but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or

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Section 42 — Note 1

(1) A, a Brahmin married B, a Brahmin girl, in 1850—In 1851 A was converted to Christianity —B, refused to live with him and in 1857 relinquished all her claims on him and his estate— In 1881 A died and possession of his estate was taken by Administrator General. In a suit to administer the estate, it was held that A's father was entitled to the whole estate. (1886) 9 Mad 466 (471).

(2) The English view that a man is not the father of the illegitimate children applies also under the Act. AIR 1914 Cal 222 (223) (DB).

children of each deceased brother or sister,* shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood who was the son of his father but not of his mother. The mother takes one fifth, John and Henry each takes one fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

[1865—S. 37.]

[*] Whether of the whole or the half-blood.

Note.—Under the Hindu law brothers and sisters and brother's son and sister's son though they belong to same category of heirs belong to different class—They are not simultaneous heirs.

45. Where intestate's father dead and his mother and children of any deceased brother or sister living. — If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration

A, the intestate, leaves no brother or sister but leaves his mother and one child of a deceased sister, Mary, and two children of a deceased brother, George. The mother takes one third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

[1865—S. 38.]

Note.—Under the Hindu law the mother excludes the child or children of deceased brother or sister.

46. Where intestate's father dead, but his mother living and no brother, sister, nephew or niece. — If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

[1865—S. 39.]

Note. — Under the Hindu Law the mother is a preferential heir and she shares the property equally with the sons, daughters, son and/or daughter of pre-deceased son, son and/or daughter of pre-deceased daughter, widow etc. etc.

47. Where intestate has left neither lineal descendant, nor father, nor mother.—Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

[1865—S. 40.]

Note.—Brothers and sisters of the deceased are class II heirs under the Hindu Law and rank after the father who is No. 1 in class II. Father's parents i. e. grand parents succeed only if there be no brothers or sisters or brother's son or daughter's son or sister's son or daughter.

48. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister. — Where the intestate has left neither lineal descendant, nor

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Section 47 — Note 1

(1) On intestacy the brother of deceased succeeds in preference to the grand father. (1754) 3 Atk 762 (766).

(2) Where there is brother of the whole blood to the intestate and a sister of the half blood, the sister should have half a share. (1686) 1 Vern 403 (404)=23 E R 545.

Section 48 — Note 1

(1) The Act does not concern itself with the religion of the claimant for succession although the religion of the deceased plays an important role and it is almost determining factor in the matter of applicability or otherwise of rules of succession laid down in the Act to a particular case. AIR 1964 Assam 58 (59) = ILR (1963) 15 Assam 467 (DB).

parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations

(i) *A*, the intestate, has left a grandfather, and a grandmother and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(ii) *A*, the intestate, has left a great-grandfather, or a great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iii) *A*, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree will take equal shares.

(iv) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They will each take one-eleventh of the property.

[1865—S. 41.]

Note.—Heirs contemplated are those who are called agnates or cognates under the Hindu Law.

49. Children's advancements not brought into hotchpot. — Where a distributive share in the property of a person* who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

[1865—S. 42.]

[*] Whether a man or a woman.

CHAPTER III

SPECIAL RULES FOR PARSI INTESTATES

*[**50. General principles relating to intestate succession.** — For the purpose of intestate succession among Parsis—

(a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the wombt but who have been subsequently born alive;

(b) a lineal descendant of an intestate who has died in the lifetime of the intestate without leaving a widow or widower or any lineal descendant

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Section 48—Note 1 (contd.)

(2) Death of Christian intestate—Nearest relation Hindu—Latter entitled to succeed to former as her nearest consanguine—Difference in religion would not disentitle latter to grant of letters of administration. AIR 1956 Cal 177 (178) (DB).

(3) Parsi — Applicability of English Rule of advancement as contained in Statute of Distribution — By excluding S. 42 (now S. 49) by S. 8 of Parsi Succession Act from applying to Parsis, Legislature did not intend to make the English rule applicable to Parsis. (1878) 2 Bom 75 (82).

Section 49 — Note 1

(1) An advancement by way of portion is something given by the parent to establish the child in life or to make what is called a provision for him. It is not a mere casual payment. Thus an admission fee at the Middle Temple for a child intended for the Bar, price of the commission and outfit of the child entering Army and advances made for purchase of plant and materials for mining operations were held to be advancements. (1875) 20 Eq 155 (157, 158).

(2) The exception in English law by way of advancement in favour of wife or child does not apply in India. AIR 1915 P C 96 (97) = 37 All 557 = 42 Ind App 202. (Purchase by Hindu husband in wife's name is presumed to be benami.)

Section 50 — Note 1

(1) Prior to the passing of Parsi Succession Act, 1865, the Parsis in the town and island of Bombay were as to succession governed by the English law as modified by Act IX of 1837 and in the mofussil the Courts took evidence and enforced what were proved to be the usages of Parsis in that locality. (1887) 11 Bom 1 (4) ** (1906) 30 Bom 359 (362) ** AIR 1927 Bom 22 (30) = 51 Bom 167 (DB).

(2) In determining the succession to immovable property in British India of a deceased Parsi temporarily residing in a State, the law applicable will be that prevailing in British India and the custom prevailing in the State will not be recognised. AIR 1938 Bom 238 (241).

or a widow of any lineal descendant shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and

(c) where a widow of any relative of an intestate has married again† in the lifetime of the intestate, she shall not be entitled to receive any share of the property of which the intestate has died intestate, and she shall be deemed not to be existing at the intestate's death.]

[Cf.—Hindu Succession Act, 1956, Ss. 8, 15.]

[°] Sections 50 to 56 were substituted for the original sections 50 to 56 by the Indian Succession (Amendment) Act, 1939 (XVII of 1939), S. 2. [12.6.1939].

[†] An unborn child is described in the law as being en ventre sa mire (in his mother's womb). See Hindu Succession Act, 1956, S. 20.

[‡] Hindu Widow's Remarriage Act, 1856 had long back removed this legal incapacity of Hindu widows. Under the current law of succession also a Hindu widow remarrying, after inheriting property as a widow would not be divested of the property vested in her as heir to deceased. It is however doubtful that if a widow has already remarried before the death of the intestate, she would succeed him in the absence of other heirs even if she were a preferential heir in law.

*[**51. Division of a male intestate's property among his widow, children and parents.**—(1) Subject to the provisions of sub-section (2), the property of which a male Parsi dies intestate shall be divided—

(a) where he dies leaving a widow and children, among the widow and children, so that the share of each son and of the widow shall be double the share of each daughter, or

(b) where he dies leaving children but no widow, among the children, so that the share of each son shall be double the share of each daughter.

(2) Where a male Parsi dies leaving one or both parents in addition to children or a widow and children, the property of which he dies intestate shall be divided so that the father shall receive a share equal to half the share of a son and the mother shall receive a share equal to half the share of a daughter.]

[*] See Foot-note (a) under S. 50.

*[**52. Division of a female intestate's property among her widower and children.**—The property of which a female Parsi dies intestate shall be divided—

(a) where she dies leaving a widower and children, among the widower and children so that the widower and each child receive equal shares, or

(b) where she dies leaving children but no widower, among the children in equal shares.]

[*] See Foot-note (*) under S. 50.

*[**53. Division of share of predeceased child of intestate leaving lineal descendants.** — In all cases where a Parsi dies leaving any lineal descendant, if any child of such intestate has died in the lifetime of the intestate, the division of the share of the property of which the intestate has died intestate which such child would

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Section 50—Note 1 (contd.)
(Custom of divorce by mutual farkats in Baroda State.)*† AIR 1929 Bom 478 (479) (DB). (Custom of adoption in Baroda State.)

(3) Under Parsi Succession Act (XXI of 1865) widows and children rank before brothers and sisters. (1880) 4 Bom 537 (544) (DB).

Section 52 — Note 1

(1) By "widower" is meant a widower relatively to the deceased wife only and without the fact or possibility of the widower remarrying. (1887) 1 Bom 1 (5).

(2) Where a Parsi female dies intestate in respect of certain property which she is possessed of, that property devolves upon her husband and children. (1903) 5 Bom L R 252 (254, 255). (Case under Act XXI of 1865).

Section 53 — Note 1

(1) It is not necessary, so far as the natural and grammatical sense of the words of the section is concerned, that in order for the widow or widower to take and for the issue to take there should be in existence at the time of the death of the intestate, both widow or widower and issue. (1877) 1 Bom 506 (511). (Case under S. 5 of Act XXI of 1865).

have taken if living at the intestate's death shall be in accordance with the following rules, namely :—

(a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this Chapter as if he had died immediately after the intestate's death :

Provided that where such deceased son has left a widow or a widow of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this Chapter as property of which the intestate has died intestate, and in making the division of such residue the said deceased son of the intestate shall not be taken into account.

(b) If such deceased child was a daughter, her share shall be divided equally among her children.

(c) If any child of such deceased child has also died during the lifetime of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b) as the case may be.

(d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which he or she would have been entitled if living at the intestate's death by reason of the predecease of all the intestate's lineal descendants directly between him or her and the intestate.]

[*] See Foot-note (*) under section 50.

*[54. **Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow of any lineal descendant.**— Where a Parsi dies without leaving any lineal descendant but leaving a widow or widower or a widow of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules, namely:—

(a) If the intestate leaves a widow or widower but no widow of a lineal descendant, the widow or widower shall take half the said property.

(b) If the intestate leaves a widow or widower and also a widow of any lineal descendant, his widow or her widower shall receive one-third of the said property, and the widow of any lineal descendant shall receive another one-third, or if there is more than one such widow, the last mentioned one-third shall be divided equally among them.

(c) If the intestate leaves no widow or widower but one widow of a lineal descendant, she shall receive one-third of the said property or if the intestate leaves no widow or widower but more than one widow of a lineal descendant, two-thirds of the said property shall be divided among such widows in equal shares.

(d) The residue after the division specified in clause (a), (b) or (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II. The next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each male shall take double the share of each female standing in the same degree of propinquity.

(e) If there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.]

[*] See Foot-note (a) under section 50.

Section 54 — Note 1

(1) The word "next-of-kin" is merely a collective name for all the persons and classes enumerated in the schedule referred to in the section. (1898) 22 Bom 909 (914).

(2) Will by Parsi providing that in case his son dies issueless, son's widow should be excluded from getting any share in his property—Son dying issueless—Widow claiming property as heir of her husband though not of testator—*Held* she was entirely excluded from any share whether as heir of her husband or otherwise. AIR 1919 Sind 4 (6)=14 Sind L R 203.

*[55. Division of property where intestate leaves neither lineal descendants nor a widow or widower nor a widow of any lineal descendant.—When a Parsi dies leaving neither lineal descendants nor a widow or widower nor a widow of any lineal descendant, his or her next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. The next-of-kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each male shall take double the share of each female standing in the same degree of propinquity.]

[*] See Foot-note (a) under S. 50.

*[56. Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.—Where there is no relative entitled to succeed under the other provisions of this Chapter to the property of which a Parsi has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to him.]

[*] See Foot-note (a) under S. 50.

PART VI

TESTAMENTARY SUCCESSION

CHAPTER I

INTRODUCTORY

*57. Application of certain provisions of Part to a class of wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; †[and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

Provided that marriage shall not revoke any such will or codicil.

[Hindu Wills Act, 1870—Ss. 2, 3, Hindu Succession Act, 1956, S. 30].

[*] The original S. 57 was re-numbered as sub section (1) of that section and sub. section (2) was added by the Indian Succession (Amendment) Act, 1926 (XXXVII of 1926), S. 2; subsequently sub-section (2) was omitted and sub-section (1) was renumbered as S. 57 by the Indian Succession (Amendment) Act, 1929 (XVIII of 1929), S. 3.

[†] The word "and" and clause (c) were added by Act XVIII of 1929, S. 3.

Section 55 — Note 1

(1) In construing the schedule mentioned in the section (S. 7 of Parsi Succession Act (XXI of 1865)) the section shows that (1) where it was intended that any class of relatives should, if living, absolutely exclude any other, they were placed within a separate article; (2) within the particular articles differences in propinquity of blood are so far recognized that each degree constitutes a class not for the purpose of excluding or being preferred to any other, but for the purpose of giving each male double the share of each female with it; (3) all males within a particular article, or even within a particular degree of propinquity do not necessarily take equal shares. (1898) 22 Bom 909 (914, 916).

SECTION 57 — SYNOPSIS

1. Scope.
2. "Hindu."
3. Bequest by Hindu to unborn person.
4. "Buddhist."

1. Scope. — [1] S. 57, read with Sch. III makes it clear that the operation of rule embodied in S. 106 of the Act applies only to wills made after 1st January 1927. AIR 1960 Andh-Pra 368 (370) (DB).

Section 57 — Note 1 *(contd.)*

(1A) The question as to whether testator had a right to bequeath properties under will executed by him is wholly foreign to proceedings for probate or letters. (1973) 39 Cut L T 525 (528).

(2) Clauses (a), (b) and (c) of S. 57 related to different classes of wills. Clause (a) applied only to those wills and codicils which were made within specific boundaries in the three Presidencies of Bengal, Madras and Bombay. Similarly cl. (b) related to those wills and codicils which though made outside the territories and limits mentioned in cl. (a) dealt with immovable properties which were situated within the said territories or limits. Clause (c) was introduced by the Amending Act of 1929 in order to apply the provisions of Part VI as set out in Sch. III to the remaining part of British India as it was at that time. ILR (1955) 5 Raj 614 (621, 622).

(3) Probate of will not necessary in case where both the person and property of any Hindu, Budhist, Sikh or Jaina are outside the territories specified in S. 57 (a)—Suit instituted at Delhi for recovery of certain sum on the basis of unprobated will — Suit was held to be competent in view of S. 213 (1) read with S. 57 (a) and (b) exempting such a case from its rigour. I L R (1967) 2 Punj 334 = AIR 1968 Punj 108 (109) (DB). (AIR 1961 Punj 509, Overruled.)

(4) Execution taken out by legatee of deceased decree-holder—Genuineness of will can be considered in execution itself — Sections 213 and 57 did not oust jurisdiction of executing Court as the will was executed outside city of Madras and property also was situated outside that city. AIR 1969 Mad 271 (272) = (1968) 2 Mad L J 610 (ILR (1964) 2 Mad 363, Dissented from.)

(5) Section 213 (2) excluded the applicability of S. 213 (1) in the case of wills by Muhamadans and wills made by any Hindu, Buddhist, Sikh or Jain where such wills as are of the classes specified in cls. (a) and (b) of S. 57, AIR 1966 Punj 385 (386, 387)=(1966) 68 Pun L R (D) 144.

(6) When a will by a Hindu does not fall within cls. (a) and (b) of S. 57, probate of will need not be taken out before executor or legatee files suit by reason of the provisions of S. 213. AIR 1937 Sind 318 (320)(DB) ** AIR 1961 Raj 40 (41) = ILR (1960) 10 Raj 1463 ** AIR 1930 Mad 956 (959, 961) (DB).

[See also AIR 1926 Mad 434 (447) = 49 Mad 261 (FB). (Hindu Wills Act is not applicable to the Hindu will executed in the moffusil — The estate vests in the executor accepting office from the date of testator's death — No probate is necessary.)]

(7) Neither the place where the will was made is within the territories specified in cl. (a) of S. 57 nor the immovable properties to which it relates are within these specified territories — Prohibition contained in S. 213 (1) does not apply and absence of probate will not debar legatee from claiming his rights on the basis of will. (1972) 2 Cut W R 1451 (1454).

(8) Property bequeathed is not situated within local limits of ordinary original jurisdiction of High Court of Madras or Bombay or in territories of Bengal — S. 213 is not attracted—Person in whose favour property was bequeathed could maintain application for execution of eviction order obtained by testator prior to his death, without obtaining probate of his will. 1970 Rent C R 785 (788) (Delhi).

(9) A will executed by a Hindu in the year 1923 A. D. in the former State of Tripura is clearly not of a class covered by cls. (a) and (b) of S. 57 and hence it would not be inadmissible in evidence as a document of title simply because it was not probated. AIR 1956 Tripura 18 (20).

(10) Where the will is of the class specified in S. 57, cl. (c), probate of will is not necessary. Section 213 is not applicable to such a case. AIR 1952 Nag 88 (89) = ILR (1952) Nag 189.

(11) Legatee instituting suit without obtaining probate of will — Held, even though legatee's claim fell under S. 57 (c) and it was not necessary to obtain probate under S. 213, probate was required to be taken under mandatory provisions of S. 214 (2). 1969 All L J 946 (949) (DB).

(12) Sections 213, 57 and 58 of the Marwar Act make it clear that, whereas by virtue of S. 213 (2), Section 213 (1) was made applicable to a class of wills specified in S. 57 (a), the legislature clearly meant that S. 213 (1) was not applicable to wills made before the passing of the Marwar Act, 1936 which came into force in the former Jodhpur State on 6-3-1937. ILR (1955) 5 Raj 614 (618 to 622).

(13) Under the Notifin. No. 7988 D/- 19-7-1904 issued by the Judicial Commissioner, Central Provinces, the District Judges were authorised to receive applications for probate and letters of administration even in the cases of Hindu wills not falling under S. 57. That notification must be deemed to continue in force as one under sub-s. (2) of S. 264 of the present Succession Act. The result is, that though it was not obligatory for any one to obtain probate in respect of the will of a Hindu in any local area beyond the towns of Calcutta, Madras and Bombay, the District Judge had jurisdiction to grant or refuse the same if moved for probate. AIR 1956 Nag 209 (210) = ILR (1956) Nag 549 (DB).

(14) Notification under S. 300 (2) not necessary when will is under S. 57 (a) and (b). AIR 1970 Cal 85 (88).

(15) Will alleged to be executed by Hindu after 1st January 1927 comes under S. 57 (c). AIR 1938 All 640 (641).

(16) As a result of the new cl. (c) which has been added to S. 57 by the Indian Succession Amendment Act (XVIII of 1929) from 1st January, 1927, all Wills made by Hindus, Jainas, Sikhs or Buddhists in any part of British India on or after 1st January, 1927, must be reduced to writing, signed and attested. But all Wills made by a Hindu, etc., before 1st January, 1927, outside the areas governed by the Hindu Wills Act, i. e., outside the province of Bengal and the Presidency towns of Madras and Bombay, were valid even if made orally or unattested. AIR 1956 Tripura 18 (19).

(17) An unattested will by a Hindu lady executed in Adyar beyond the local limits of the original civil Jurisdiction of Madras High Court is valid. AIR 1928 Mad 1279 (1281) = 52 Mad 160 ** AIR 1927 All 497 (498) = 50 All 314 (DB). (Hindu will executed in 1923 not signed by testator or attested — Held valid and

58. General application of Part.—(1) The provisions of this Part shall not apply* to testamentary succession to the property of any Muhammadan nor, save as provided by Section 57, to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jaina; nor shall they apply to any will made before the first day of January, 1866.

(2) Save as provided in sub-section (1) or by any other law for the time being in force the provisions of this Part shall constitute the law of †[India] applicable to all cases of testamentary succession.

[1865—Ss. 2, 331.]

[Hindu Succession Act (1956), S. 30.]

[*] Hindu Succession Act, 1956, S. 30 has made the provisions of this Part to Hindus, which term per that Act includes Jainas, Sikhs, Buddhists, Brahmos, Arya Samajists, in fact every one who is born as such or even brought up as such though not so born.

[†] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Sch. [1.4.1951].

CHAPTER II

OF WILLS AND CODICILS*

59. Person capable of making wills.—Every person of sound mind† not being a minor† may dispose of his property by will.*†

Section 57 — Note 1 *(contd.)*

as it was the last will it was sufficient to revoke prior registered will.)

(18) No oral will can legally be made by a Hindu after 1st January, 1927 in view of Ss. 57 (c) and 63. 42 Pun L R 326 (328) (DB).

[See AIR 1965 Manipur 9 (10). (Probate of an oral will cannot be granted under S. 276 — Act made applicable to Union territory of Manipur in 1957 — Oral will made in 1962 — Probate will not be granted.)]

(19) The Act was not made applicable to Berar even in 1930 and hence a Hindu residing in Berar was capable in law to dispose of his property by an oral will. AIR 1958 Bom 79 (82) = ILR (1958) Bom 970 (DB).

(20) No probate is necessary in order to set up a claim regarding property on basis of a will executed in Punjab and not relating to property situated in territories mentioned in S. 57 (a). AIR 1962 Punj 382 (383).

(21) Under the Hindu Law it is not competent to a member of joint family to execute a will in regard to his share in the joint family properties, but if all the coparceners of joint family agree and consent a will so executed can be given effect to as a family settlement. AIR 1964 Mad 291 (299, 300) = (1964) 2 Mad L J 545 (DB).

(22) Will executed by Hindu giving property situated in U. P. — S. 213 (2) was held applicable and not S. 213 (1) — Not necessary that will should be probated for maintenance of suit. 1968 All L J 69 (70).

2. "Hindu." — (1) A person does not become a Hindu merely because he professes theoretical allegiance to Hindu faith. Long residence in India, abdication of one's own religion, undergoing conversion, assuming a Hindu name, marriage according to Hindu rites and adoption of Hindu mode of life will show that a non-Hindu has become a Hindu. AIR 1928 Mad 1279 (1283) = 52 Mad 160.

(2) Brahmo does not cease to be Hindu and therefore grant to widow of Brahmo, must be under Probate and Administration Act. AIR 1923 Cal 265 (267)=49 Cal 1069.

3. Bequest by Hindu to unborn person. — (1) Schedule 3 does not provide that a Hindu cannot create an interest in property which could not be created before September 1870 but that the enumerated sections in the schedules do not authorise such creation. Neither Sch. 3 nor any other part of the Succession Act repeals the provision of the Hindu Disposition of Property Act and hence the power to create interest in property in favour of an unborn person given by that Act is not taken away by the Succession Act. AIR 1946 Cal 396 (400) (DB).

[See also AIR 1934 Mad 705 (708, 709) = 58 Mad 15 (DB). (The combined effect of Ss. 2 and 3, Hindu Wills Act is that a disposition permitted by the Succession Act may be invalidated but a disposition invalid under the Succession Act cannot be validated by any rule of Hindu law.)]

(2) See also Note under S. 113.

4. "Buddhist." — (1) There is no definition of the term Buddhist in the Act and the word is wide enough to cover Chinese Buddhists as well as Burmese Buddhists. But before it can be claimed that any person is excluded from the provisions of part 6 as being a Buddhist it must clearly be proved that he was professing Buddhism during his life-time. AIR 1930 Rang 42 (47)=7 Rang 720 (DB).

Section 58 — Note 1

(1) Travancore Wills Act (6 of 1074), S. 15 — In Travancore Act there is no provision corresponding to S. 58, Succession Act—Oral wills are not permissible — Rules of Muhammadan law allowing oral wills must be deemed to have been abrogated by the provisions of Travancore Wills Act in respect of wills made by Muhammadans in Travancore. ILR (1955) Trav-Co 474 (476, 477).

Section 59 — Synopsis

1. Scope.
2. "Of sound mind."
3. "Not being a minor."
4. "His property."

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from intoxication[§] or from illness or from any other cause, that he does not know what he is doing.

Illustrations.

(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(ii) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(iii) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

[1865—S. 46.]

[*] The principle that a man may override the claims of his kith and kin and select any person (of any caste or creed) on whom his property is to devolve after his death is of later origin than the principle of intestate succession. The concept of a Will is of Roman origin. It was borrowed by the Jews from them. the Mahomedans of Araby adopted it when they conquered the Roman provinces of Syna, Mesopotamia & Egypt. In India the practice of making a will was adopted by the Bengalees, perhaps because they were first to come into contact with the English conquerors.

[†] That is to say he must be able to understand (1) that he is giving property to the object of his bounty, (may be a person or institution or a legal entity) (2) the extent of the property being bestowed and (3) the claims of those (if any) whom he would be excluding from inheriting it.

[‡] See the Guardians and Wards Act, 1890, S. 4 and the Hindu Minority and Guardianship Act, 1956, S. 4.

[§] Word used here in the repealed Act, was, 'drunkenness'.

[*†] In Mizoram Union territory (former Mizo Hills District of Assam) under the Inheritance Act, 1956, anybody can make a will. Mizos are predominently Christians.

Section 59 — Synopsis *(contd.)*

5. Explanation 3.
6. Explanation 4.
7. Will by sick person.

1. Scope. — (1) In order to prove capacity in the testator, the propounder has to prove not only soundness of mind of the testator but also the fact that before executing the will he had attained the age of majority. AIR 1949 Assam 62 (63) (DB).

(2) The question whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of Ss. 59 and 63 of the Succession Act and Ss. 67 and 68 of the Evidence Act. AIR 1959 S C 443 (451)=1959 Supp 1 S C R 426.

(3) Questions as to execution and attestation of Will — Suspicious circumstances attending execution — Quantum of proof of execution are questions of fact — Test of proof is satisfaction of prudent man. 1967 Raj L W 456 (460).

(4) Will by Hindu widow — Bequeathing her husband's property held as such—Will ineffective for the legatee — Widow with limited rights cannot make a will with respect to property held with limited rights. AIR 1970 All 525 (533)=1970 All L J 297 (FB).

(5) The arrears of maintenance due to a widow belong, under the Hindu Law, absolutely to her and are not subject to any control. She is therefore entitled to dispose of those arrears by making a will. 1957 M P L J 139 (142) (DB).

(6) The rules of Hindu law only curtail the powers of an undivided coparcener to affect by will joint family property and do not take away his capacity to make a will which he has under S. 59. AIR 1953 Mad 461 (463) (DB).

2. "Of sound mind." — (1) "Sound and disposing mind" is a mind of natural capacity not unduly impaired by old age, enfeebled by illness or tainted by morbid influence. (1865) 1 P & D 398 (400).

(2) The question of a sound mind is a dominant question in a Court of probate. The test of a sound disposing mind is in law a workable test. It means in plain language an appreciation of the fact that the man is making a will, an appreciation of the contents of that

Section 59—Note 2 (*contd.*)

will and an appreciation of the nature of the disposition that he is making having regard to the claims of affection and family relationship and claims of the society or community to which he belongs. A mere perception of what is going on in the immediate neighbourhood and an ability to answer familiar questions but without competent understanding as to the nature of his property or the persons who are kindred to him or in whose favour it would be proper that he should make his will, will not be enough proof of a sound mind within the meaning of S. 59. AIR 1961 Cal 359 (362) (DB).

(3) Mere ability to sign does not imply full mental powers for a valid disposition. It is not sufficient that the man is able to answer easy questions but he must have a disposing mind so as to dispose of his property with understanding and reason. This does not mean that he should make what other people may think a sensible, reasonable or kind will. It is sufficient that there is enough understanding left to enable the testator clearly to discern and discreetly to judge of all those things and all those circumstances which enter into the nature of a rational, just and fair treatment. AIR 1921 Cal 677 (681, 682) (DB).

[See however (1873) 3 P & D 64 (72, 74). (The highest degree of mental soundness is required in order to constitute the capacity to make a testamentary disposition. A testator should understand the nature of the act, its effects and the extent of the property of which he is disposing.]

(4) "Sound mind" referred to in Section 59 does not mean that the testator should have his mental faculties in their fullest vigour, but he should have the capacity to understand the nature of his property, the memory to remember the relations and persons normally having claims on his bounty and also a judgment of his own in making the dispositions. AIR 1962 Andh-Pra 178 (184, 185) (DB) ** AIR 1966 All 570 (579) (DB). (What is required for the validity of a will is that the testator should have been able, at the time of making it, to comprehend the nature and effect of the disposition.)

(5) A man of weak intellect and incapable of managing his own affairs is not necessarily a person of unsound mind. (1906) 4 Cal L J 115 (117) (DB).

(6) Test of person being of unsound mind in legal sense is existence of delusion or belief in facts which ordinary person would not credit or belief which one cannot understand how any person in his senses could hold. Mere eccentricity or caprice, however, is not enough to constitute mental unsoundness unless it is associated with some sort of delusion. AIR 1939 Cal 379 (383) (DB).

(7) It is not at all correct to say that because an operation of the character of injection and transfusion of blood had to be done, there must have been something wrong with the mental capacity of the testator. AIR 1938 Cal 290 (294) (DB).

(8) Registration of a will by itself is not sufficient to prove that the testator knew and understood the contents of the document or that he was in a fit disposing state of mind. AIR 1955 NUC (Sau) 5052.

[See also 1963 Cur L J 65 (68) (Punj).]

(9) Where a will is registered the Court must raise a presumption, though it may be rebuttable, that the registration being a solem act all the formalities required under the law were duly fulfilled. (1948) 53 Mys H C R 80 (84, 85, 87, 89 to 91) (DB).

(10) The registration endorsement that the will was read over to the executant and understood by him cannot be taken as decisive of the testamentary capacity of the testator. The significance of the registration and the effect of the evidence of the Sub-Registrar have to be appraised with due regard to the physical and mental condition of the testator at that time. AIR 1958 Madh Pra 86 (87) (DB).

(11) Where there are circumstances to arouse suspicion as to the testator having made the will with a free and disposing state of mind and by his own volition, it is the party propounding the will who has to satisfy the Court's conscience and it is only then that the fact of undue influence assumes importance. AIR 1955 NUC (Sau) 5052.

[See also AIR 1971 All 304 (307 to 309). (Propounder must remove doubts introduced by proved facts surrounding execution of will.) AIR 1966 Andh Pra 305 (307, 308) = (1965) 2 Andh LT 187†† AIR 1965 Him Pra 62 (63, 64).]

(12) Propounder should prove that the will was not only executed by the testator but that the testator was of a sound and disposing state of mind and if the execution of will is surrounded by suspicious circumstances, it is his duty to remove those suspicions completely. (1967) 11 Law Rep 734 (747)=ILR (1967) Mys 848 (DB).

[See AIR 1967 Bom 382 (385, 386) = 69 Bom. L R 559.]

(13) Unnatural disposition would raise one of the suspicions which have to be removed by proponent of the will before he can ask for a pronouncement in his favour — Repugnancy between two parts of the will may to some extent create suspicion as to whether there was at all sufficient power of understanding on the part of testator. (1966) 6 Law Rep 422 (439, 442) (DB) (Mys).

(14) The proponent of the will who should prove both execution and disposing state of mind, becomes also fastened with the liability to remove suspicious circumstances if any surrounding execution of will. Generally speaking omission on the part of a testator to make mention of his near and dear relations who in the ordinary course should have been the objects of his bounty, is a suspicious circumstance. (1968) 1 Mys L J 510 (511).

(15) Mere physical presence of the propounder at the time of execution of will, without anything more, is not such a circumstance as to arouse the suspicion of Court about disposing capacity of testator or to make it think that the disposition made under the will was not with a free mind or that undue influence was brought to bear on the testator. (1970) Pat L J R 342 (364) (DB).

(16) A groundless prejudice of a testator against a relative will not be a good reason for setting aside his will unless it can be shown that the prejudice rests on some mental aberration. The very omission of a close dependent from the bounty of the testator raises a presumption in favour of some undue influence. The pro-

Section 59 — Note 2 (contd.)
bative force of such a testament rises and falls in inverse ratio to its unreasonableness. AIR 1962 Punj 196 (199. 200) (DB).

(17) In a case based upon a will, the propounder or the plaintiff must plead that the document was properly executed and duly attested and was the last will of testator—Question of presumption under S. 90 of the Evidence Act would arise only with respect to a case set up by plaintiff and not with respect to a case which was never pleaded by plaintiff. AIR 1967 Bom 382 (388, 389)=69 Bom L R 559.

(18) The onus to prove that the testatrix had the requisite testamentary powers (i. e., of sound disposing mind) at the material time lies on the propounder of the will. AIR 1958 Cal 440 (444) (DB).

(19) Onus probandi is on the party propounding the will to satisfy the Court that it is the last will of a free and capable testator.

The expression 'free and capable testator' does not mean that the testator should make what other people may think a sensible will or a reasonable will or a kind will.

The initial presumption in the case of a will which is natural and simple, is that where execution is proved the testator did intend what he purports to have done by the will. (1948) 53 Mys H C R 80 (84, 85, 87, 89, 90, 91) (DB).

(20) A person cannot be considered capable of making a valid will unless he be of sound mind, memory, and understanding. The testator must retain a degree of understanding to comprehend what he is doing to have a volition, or power of choice so that what he does really be his own doing, and not the doing of anybody else.

In order to constitute a sound disposing mind, a testator must also have capacity to comprehend the extent of his property and the nature of the claims of others, whom, by his will, he is excluding from participations in that property. The protection of the law is needed most especially when one object may be so forced upon the attention of the invalid, as to shut out all others that might require consideration. A man may change his mind suddenly and may think of giving more share to any one of his sons, but no inference can be drawn one way or the other unless it can be shown that he was so weak in intellect at the time of executing the will as to have forgotten the claims of the other sons upon him. AIR 1953 Nag 316 (321) (DB).

(21) The testamentary capacity of the testator who makes a sane disposition and knows what he is about to do, might be presumed. AIR 1953 Cal 462 (465) (DB).

(22) The presumption under S. 90, Evidence Act is one of due execution and attestation. This involves the idea that the document was executed duly and attested duly i. e. the document was validly executed. This involves a further conception that the testator had testamentary capacity to execute the will. AIR 1953 Cal 471 (473) (DB).

(23) Among the Indians there is always a tendency not to execute the will till they think that they are not likely to survive and therefore merely the ground that the will was executed too near the death can be no ground particularly if the deceased had only a temperature of 100 degrees and suffering from tuberculosis. 1957 All L J 667 (669).

(24) Uuless it can be established that the will was executed by fraud or by a person who was not in a fit disposing mind, it cannot be thrown away merely on suspicion. If there would have been other circumstances deprivation of a wife in a will may also be one of the suspicious circumstances but that alone cannot be a circumstance to raise a presumption against the will. 1957 All L J 667 (668).

(25) Person opposing will, shown in position to become aware of testator's incapacity if it existed—Plea of testator's incapacity not raised by him at earliest stage — Court will treat the factor in favour of propounder of will. AIR 1966 All 570 (578)=ILR (1965) 1 All 483 (DB).

(26) Testamentary capacity described and tests indicated—Execution of will under undue influence, what constitutes — Burden of proof—Propounder himself benefiting under will — Burden is on him to establish testamentary capacity—Held that owing to his advanced age and complete blindness coupled with complete domination over the testator's mind by one M the will was executed under undue influence and the testator had not therefore the free disposing mind necessary for making a valid will. (1955) 8 Sau L R 110 (117).

[See also 11 Law Rep 734 (748) = I L R (1967) Mys 848 (DB).]

(27) It is for the party propounding a will to satisfy the conscience of the Court that the instrument propounded is the last will of a free and capable testator and secondly, that if a party writes or prepares a will under which he takes a benefit that is a circumstance that ought generally to excite the suspicion of the Court. The fact that the testator was in a state of health which had affected his memory and rendered him incapable of managing his estate fell short of establishing that he was incapable of considering what dispositions of his property he should make in favour of members of his family, or that he did not understand the dispositions which in fact he did make. AIR 1947 PC 169 (172)=ILR (1947) Kar (PC) 265**ILR (1965) 1 Mad 722 (724) (DB)**A I R 1962 Andh Pra 178 (181, 182) (DB).

(28) Proof of wills — Onus is on propounder and he must satisfy Court that the will is the last will of a free and capable testator and should remove suspicion if any. He must prove affirmatively that the testator knew and approved contents of the document. The burden then shifts to persons questioning genuineness of will. 1968 Ker L J 123 (146 to 150) (DB).

[See also 1963 Cur L J 65 (68) (Punj).]

(29) The principle enunciated in the case of Parker v. Felgate, (1883) 8 P D 171 should be applied with the greatest caution and reserve when the testator does not himself give instructions to the solicitor who draws the will but to a lay intermediary who repeats them to the solicitor. The opportunities for error in transmission and of misunderstanding and of deception in such a situation are obvious, and the Court ought to be strictly satisfied that there is no ground for suspicion, and that the instructions given to the intermediary were unambiguous and clearly understood, faithfully reported by him and rightly apprehended by

Section 59 — Note 2 (contd.)
the solicitor, before making any presumption in favour of validity. A I R 1948 P C 200 (202, 203).

(30) If a person has given instructions to a solicitor to make a will, and the solicitor prepares it in accordance with those instructions all that is necessary to make it a good will, if executed by the testator, is that he should be able to think thus: "I gave my solicitor instructions to prepare a will making a certain disposition of my property; I have no doubt that he had given effect to my instructions, and I accept the document which is put before me as carrying it out". A I R 1956 Madh B 246 (248) (DB).

(31) Where true and sufficient reason is assigned in the will, the will does not become inofficious. (1948) 53 Mys H C R 80 (97) (DB).

(32) Where the testator lived for nearly three years after the execution of the will, and the statements of the attesting witnesses indicated that he was in sound disposing mind when he executed the will the fact that he was almost blind and the defendants to whom he had bequeathed the property had been living with him for a long time would not be sufficient to justify a finding of undue influence or lack of a proper dispositive mind. AIR 1961 Punj 411 (414) (DB).

(33) When the testatrix was able to give to the lawyers the outlines of the manner in which the estate is to be disposed of and was able when the lawyers' efforts were read out to her to understand that the instructions of the will had been complied with the requirements of a valid will are complied with. If the lawyer thought fit to make provision about easement rights which might be beyond the understanding of the testatrix, this inability of the testatrix to understand the provisions as to easement right does not matter and certainly does not vitiate the will. AIR 1961 Cal 518 (520).

(34) To say that the propounder being a legatee, the will must be positively proved to be that of the testator beyond all possibility of a reasonable doubt is to state the proposition a bit too broadly. It is true that when the propounder of a will is also a beneficiary under it, then the Court has to scrutinise the evidence with care, so as to satisfy its own conscience that the document does represent to be a true will of the testator, and this is all that the law requires; besides, this would depend on the facts and circumstances of each case. (1961) 63 Pun L R 193 (205) (DB).

(35) Medical evidence of doctor who treated the testatrix in her last illness on the question of her state of mind is to be preferred to the medical evidence of a doctor who did not treat her, but was called to counter the evidence of the attending doctor. AIR 1962 Andh Pra 178 (186) (DB).

(36) In the absence of any medical evidence to show that in fact the testator had no capacity to understand the effect of his own action at the time when the will was executed by him, mere old age of the testator (90 years in the instant case) does not lead to such an inference. AIR 1962 Pat 481 (483) = ILR 41 Pat 379 (DB).

(37) Finding on question whether person executing will was of competent understanding when he executed the will — Finding is one of fact — High Court cannot interfere in second appeal. 1963 Cur L J 65 (68) (Punj).

3. "Not being a minor." — (1) Onus of proof that testator was major when he made the will and was competent to execute it is on person relying on will. AIR 1968 S C 947 (951) = (1968) 2 S C R 292 = (1968) 1 S C W R 940. (AIR 1941 Mad 179, Approved.)

(2) A will executed by a person who is not a major at the time of the execution thereof is ineffective. AIR 1941 Mad 179 (180) (DB).

(3) No Hindu can make a will who is less than eighteen years of age. (1912) 36 Bom 622 (624) (DB).

(4) Married woman governed by Indian Succession Act of whose person and property guardian has been appointed by the Court cannot dispose of her property by will before she attains age of 21 years. AIR 1924 Cal 644 (645).

(5) Where the ground of defence is the minority of the testator the onus is on the party propounding the will to prove that the alleged testator was of full age. AIR 1915 Mad 815 (816) (DB). (Obiter.)

4. "His property." — (1) Assent by legatee would not clothe testator with authority to deal with property over which he had no disposing power. AIR 1929 Sind 19 (22) (DB).

(2) A testator cannot alter the course of law by the use of mere negative words excluding certain relations, unaccompanied by any effective disposition of his property. (1880) 4 Bom 537 (543) (DB).

5. Explanation 3. — (1) The question of insanity is properly a mixed one — Partly within the range of common observation and so far fit to be considered by a jury; and partly within the range of special experience and so far the proper subject for medical inquiry. It is the office of the Court to inform itself, as far as opportunity permits of the general results of the medical observation and to approach the subject on two opposite sides thus indicated—Searching for a fit conclusion by alternately presenting the parallel of sanity and insanity to the sayings and doings of the testator. (1865) 1 P & D 398 (405).

(2) A testamentary disposition cannot receive effect if it be shown that its provisions were prompted by an insane delusion or delusions existing in the mind of the testator. 1899 App Cas 1 (7).

[See however (1880) 14 Ch D 674 (680).]

(3) Partial unsoundness, not affecting the general faculties, and not operating on the mind of a testator in regard to a testamentary disposition, is not sufficient to deprive a person of the power of disposing of his property. (1870) 5 Q B 549 (556, 571).

(4) Will—Mental weakness to constitute testamentary incapacity must be qua will in question. AIR 1933 Cal 574 (575) (DB).

(5) Generally speaking, the law presumes sanity in the testator. If the testator's sanity is disputed, the burden of proof lies upon the person propounding the will to prove affirmatively that the testator was of sound mind at the date of its execution and that he knew, understood and approved of its contents. If insanity of the testator before the date of will

Section 59 — Note 5 (contd.)
is once established burden of proof lies on person propounding the will to show that it was made after testator's recovery or during lucid interval. If it is not established, or habitual insanity does not exist; burden of proving actual insanity at the date of execution of the will shifts to person impeaching the will. AIR 1932 Bom 588 (590).

[See also (1865) 1 P & D 398 (434). (Case of monomania.)]

[6] Where the general condition of a testator's mind is deranged, his capacity fluctuating and the intervals of reason very short it is incumbent upon the party propounding the instrument to show by more than ordinary proof, that at the precise time when the act was done the testator was in the possession and exercise of his mental faculties. (1840) 13 E R 59 (62)=3 Moo P C 136.

6. Explanation 4. — (1) It is the duty of the propounder of a will to show that the testator had the testamentary capacity. To discharge that burden it must be shown that the testator had full understanding and reason and judgment in respect of his property and the parties whom he decided to benefit. Mere ability to sign does not necessarily imply the possession of full mental power requisite for a valid disposition of property nor is it sufficient to show that the testator was conscious when he executed the instrument. AIR 1915 Cal 225 (228, 230) (DB).

(2) Law presumes sanity in testator and where a will is not challenged it is enough to establish that the will was duly executed by testator that he was not a minor and that he was capable of making a will under the law by which he was governed. A I R 1932 Bom 588 (590)

(3) In order that a will may be found good, it is sufficient if, when will was read out to him and explained to him or also when he read it himself he was capable of understanding that his instructions in main had been carried out. AIR 1932 Bom 588 (590).

(4) In case of will if Court considers that 'due execution' has been proved, that in itself will amount to finding that testator executed the will with full knowledge of claims of his relations upon his bounty the state of his properties and of every material circumstance. AIR 1933 Cal 769 (770) (DB).

(5) Where mental capacity of testator is challenged by evidence Court must be satisfied before granting probate that testator was of sound disposing mind and did know and approve of contents of the will. AIR 1933 Cal 449 (452) (DB)**AIR 1915 Cal 393 (396) (DB)**(1899) 22 Mad 345 (346) (DB).

[See also (1865) 1 P & D 398 (438).

(6) A Court will not reject a will merely because its terms appear extraordinary against clear evidence of due execution by a competent testator. But where the terms are unusual and the evidence of testamentary capacity doubtful the vigilance of the Court will be aroused and before pronouncing for the will the Court will require to be satisfied beyond all reasonable doubt that the testator was fully congizant of its contents and in a condition to exercise and did exercise thought, judgment and reflection respecting the act he was doing. AIR 1915 Cal 225 (230) (DB).

7. Will by sick person. — (1) Wills by sick and dying—Degree of understanding which law requires is such as may reasonably be expected from persons in that condition. He must be able to exercise competent understanding as to general nature of the property as to state of his family and as to general condition and claims of objects of his bounty, as to nature of instrument which he executes, and as to general nature and general objects and provisions which it contains; if he can do that, though he may be very feeble and debilitated in understanding and be at point at death it is enough. AIR 1938 Rang 322 (323) (DB).

(2) Proof of testamentary incapacity — There must be clear evidence that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property. (1911) 38 Cal 355 (367) = 33 Ind App 13 (PC).

(3) Will by sick person — Proof of testamentary capacity—Test—Test to whether those persons who normally would have been object of testator's bounty, have been provided for in manner in which they would normally have been so provided. (1966) 6 Law Rep 422 (439) (DB) (Mys).

(4) The fact that the testatrix was unwell when she executed the will does not prove that she had not testamentary capacity. AIR 1945 P C 174 (175)=I L R (1945) Kar (P C) 351++ AIR 1965 Punj 204 (205) = 66 Pun L R 1208 (Testator does not have to be found in perfect state of health to have his will declared valid.)

(5) Will by sick person—Proof of testamentary capacity—What must be proved is not unsatisfactory condition of body but want of competent understanding — Fact of testator's signature on will or that he presented it for registration and admitted its execution cannot by itself conclude the matters about condition of his mind. (1966) 6 Law Rep 422 (435) (DB) (Mys).

(6) Where a will was executed by a man about two hours before his death when his condition was critical and when he was restless with pain and there was no information whatsoever either as to instructions if any given by him or the time when and the person to whom the directions were given and there was no evidence to show that the will as prepared was before execution read over to and approved by him: Held that the propounders had failed to establish that the testator had sound and disposing mind when he affixed his signature to the will. A I R 1915 Cal 225 (230) (DB).

(7) The testator was in a state of high fever and of extreme and increasing weakness, and after dictating one clause fell back exhausted and did not speak again till after the signature — His wife dictated the rest and the fair copy was brought to him to sign after an hour or so when he held out his hand for pen but was not able to write. He was made to sit up and his hand was guided. His holding out his hand for pen was the only act which made witness to think that he understood what he was doing and had not spoken for the whole day except dictating the clause — It was held that these circumstances clearly indicated that the testator was not capable of testamentary act and the alleged codicil was not proved. (1898) 22 Bom 17 (36, 37)=24 Ind App 148 (PC).

(8) Testator's physical condition on the day on which he signed will was so low as to necessitate administration of coramin — Will making grossly inadequate provision for wife and

60. Testamentary guardian. — A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

[1865—S. 47.]

61. Will obtained by fraud, coercion or importunity. — A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.*

Illustrations

(i) A, falsely and knowingly represents to the testator, that the testator's only child is dead or that he has done some undutiful act and thereby induces the testator to make a will in his, A's frvour; such will has been obtained by fraud, and is invalid.

(ii) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) A threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will yet being so much under the control of B that he is not a free agent, makes a will, dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(vi) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport and does so merely to purchase peace and in submission to B. The will is invalid.

(vii) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

Section 59 — Note 7 (contd.)

correspondingly unreasonable bequest made to mother — Repugnant provisions even in respect of specification of persons in whose favour bequest was made — Held, these facts could not produce conviction of competent understanding on part of testator. (1966) 6 Law Rep 422 (434, 444) (DB) (Mys).

(9) Where the testator was being looked after by his sister and her husband and he had a desire to benefit them and in executing the will he was not ignoring the legitimate claim of any one else and there was evidence to show that although he was suffering from tuberculosis, he went to a petition writer and to the Sub-Registrar's office and executed the will: Held, under circumstances, will was not brought about by any undue influence and was valid. AIR 1934 Lah 628 (629) (DB).

(10) The protracted illness of the testator, his being very ill on the day of the alleged execution of the will, the progressive deterioration in his signatures on the will, his great weakness as evidenced by the fact that he had to be lifted up by others and seated on his bed, his inability to speak and the fact that he died within 5 hours of the alleged execution of the will and the statement of the witness that he refused to attest the will as the testator was unconscious leave no room for doubt that at the time of the alleged execution of the will the testator was in fact incapable of understanding the nature of his act and was not in a sound disposing mind. AIR 1950 All 202 (205).

(11) A patient of tuberculosis does not lose his consciousness ordinarily and therefore merely because he was suffering from tuberculosis, it cannot be said that he was not in a fit disposing mind. 1957 All L J 667 (669).

(12) A testator may have a clear apprehension of the meaning of a draft will submitted to him under which the whole of his property was given to strangers and may approve of it, and yet if he was at the time through infirmity or disease so deficient in memory that he was oblivious of the claims of his relations and if that forgetfulness was an inducing cause of his choosing strangers to be his legatees, the will is invalid. AIR 1948 P C 200 (203, 204).

(13) Testamentary incapacity — Condition of testator at the time of execution of will—Speechless and signifying intentions by pointing fingers—Will is void. AIR 1961 Assam 129 (131) (DB).

Section 60 — Note 1

(1) This section is not made applicable to Hindus — If therefore Hindu father has power to appoint a testamentary guardian it is not by virtue of any statute but under Hindu law. (1907) 31 Bom 413 (417) (DB).

[See also (1898) 21 Mad 401 (402) (DB). (A Hindu mother has no authority to appoint by will, a guardian for her son.)]

(2) A testator cannot appoint a testamentary guardian of his illegitimate children. (1871) 13 Eq 36 (41).

SECTION 61 — SYNOPSIS

1. Scope.
2. Fraud — Averment of.
3. Coercion.
4. Undue influence.
5. Persons in fiduciary position.
6. Husband and wife.
7. Pardanashin ladies.
8. Proof.

1. Scope.—[1] Section embodies principles of English law. ILR (1952) 2 Cal 56 (62) (DB).

(2) Unless it can be established that a will was executed by fraud or by a person who was not in

(viii) A, with a view to obtaining a legacy from B, pays him attention and flatters him and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

[1865—S. 48]

[*] This section applies to wills of Hindus etc. — See Sch. III.

Section 61—Note 1 (contd.)

a fit disposing mind it cannot be thrown away merely on suspicion. 1957 All L J 667 (668).

(3) Where the testator, an illiterate lady intelligently understood contents of the will when it was read over to her and directed changes in it, it cannot be said that the will was not intelligently executed. AIR 1972 S C 2296 (2299) = (1973) 1 S C J 382.

(4) Where under a will writer gets a substantial advantage and the evidence is not sufficient to remove the suspicion and to satisfy the Court attaching to the provision that testator approved of it probate should not be granted of that part but should not be refused in respect of the remainder of the will. AIR 1929 PC 45 (50).

(5) Law makes a great presumption in favour of genuineness of a holograph will for the very good reason that the mind of the testator in physically writing out his own will is more apparent than in either a typed script or to a script written by somebody else. AIR 1960 Cal 551 (552, 553) (DB).

(6) Where a solicitor prepares a will in accordance with the instruction given to him it would be a good will if the testator is able to think that he can accept it as carrying out his instructions. AIR 1956 Madh B 246 (248) (DB).

(7) Absence of authority from the testator to draft a will cannot be inferred where the testator copied the will from the draft without alteration is a case of the testator having approved the draft prepared by the other. AIR 1960 Cal 551 (553) (DB).

(8) Once it is established that the testator was free and had a sound disposing mind, then it is no longer the duty of the Court to go further to inject its own ethics of what is or is not a moral or a fair dispcsition according to the Court's own standards. AIR 1960 Cal 551 (555, 556) (DB) ** (1967) 12 Law Rep 92 (105) (DB) (Mys).

(9) Where in a suit plaintiff sought only possession of property from one claiming right under a will and did not seek for declaration regarding validity of the will, though in the plaint he alleged the will to be unnatural and did not admit its validity on grounds of undue influence and coercion, Held that the suit was maintainable and if the plaintiff succeeded in proving fraud or coercion the will would be void. 1967 Cur L J 758 (759) (Punj).

(10) The fact that the propounder gets the largest benefit under the will, by itself does not make a will invalid in law. That circumstance is only a circumstance which should make the Court vigilant to examine the evidence with great suspicion but no more. AIR 1960 Cal 551 (554, 555) (DB).

(11) Defendants contesting a will on the ground of forgery cannot subsequently put up an alternative case of undue influence. AIR 1953 Nag 316 (322) (DB).

2. Fraud — Averment of — [1] In pleading general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. AIR 1915 P C 7 (13).

3. Coercion.—[1] It is not correct to contend that nothing can be "coercion" under Indian law unless it satisfies the definition of coercion in S. 15 of the Contract Act. Outside S. 15, Contract Act, "coercion" must be taken in its general and ordinary sense as an English word. (1913) 40 Cal 598 (611, 613) = 40 Ind App 56 (PC).

(2) Threat to commit suicide to obtain the execution of a document amounts to "coercion" within S. 15, Contract Act. AIR 1918 Mad 414 (416) = 41 Mad 33 (SB). (Case under S. 15, Contract Act.)

4. Undue influence. — [1] If it is established that a testatrix had retained sound mental capacity, the fact that she was influenced to make some disposition in favour of an individual, cannot go to render the bequest invalid. (1958) 2 Andh W R 654 (656) (DB).

(2) Mere persuasion and importunity which do not unduly overbear the will of the testator would not be undue influence that would vitiate the will. (1970) 1 Mad L J 252 (255).

(3) Every influence which is brought to bear on a testator cannot be characterised as 'undue.' If the testator retains his mental capacity, and there is no element of fraud or coercion the will cannot be attacked on the ground of undue influence. AIR 1955 S C 363 (366) = 1955-1 SCR 1035†AIR 1960 Cal 551 (555) (DB) * (1958) 2 Andh W R 654 (656) (DB)*AIR 1956 Madh B 246 (249) = ILR (1956) Madh B 227 (DB). (Persuasion, appeals to the affection or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution or the like are all legitimate and may be fairly pressed on a testator.)*AIR 1948 Cal 351 (352) (DB).

(4) Every influence is not undue influence and mere fact that bequest is in favour of persons who were looking after testator at or about time of will does not by itself indicate that will was executed under undue influence. ILR (1966) 1 Cal 408 (413-414) (DB).

(5) It is legitimate to urge upon a man whose condition is precarious the desirability of making a will and the person doing so cannot be said to have exercised undue influence. AIR 1946 P C 156 (164).

(6) A mere suggestion to a person to endow some properties for charitable purposes cannot amount to such influence as would render him not a free agent. (1948) 53 Mys H C R 80 (100) (DB).

(7) Where a plea of undue influence on the testator is taken what is required to be proved is not "undue influence as such but "such importunity as takes away the free agency of the transferor or testator" AIR 1948 Oudh 165 (170) (DB).

(8) Undue influence, in order to render a will void, must be an influence which can justly be described to have caused the execution of a

Section 61 — Note 4 (contd.)
paper pretending to express a testator's mind, but which really does not express his mind but something else which he did not really mean. 1920 App Cas 349 (357).

(9) Undue influence on testator in order to invalidate will must amount to coercion or fraud. Bad or morally or ethically unjustifiable influence does not amount to undue influence. AIR 1955 NUC (Assam) 2304 * AIR 1956 Madh B 246 (249) = ILR (1956) Madh B 227 (DB) ** (1970) 1 Mad L J 252 (255) ** ILR 1967 Cut 563 (566-67) (DB).

(10) Importunity or threats such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet or of escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator's judgment, discretion or wishes, is overborne will constitute undue influence, though no force is either used or threatened. AIR 1948 Cal 351 (352) (DB) *AIR 1956 Madh B 246 (249) = ILR (1956) Madh B 227 (DB).

[See also (1969) 71 Punj L R (D) 338 (343).]

(11) To constitute undue influence for setting aside a will neithr fiduciary relationship nor a dominating position will avail. The circumstance that one person had unbounded influence over another even though it was a very bad influence, would not be undue influence so as to invalidate the latter's will. AIR 1957 Ker 115 (117)=ILR (1957) Ker 346 (DB).

(12) Where the opponent in a probate proceeding alleges that the testatrix was liable to be unduly influenced by the propounder of her will on account of age and ill health of the testatrix what the Court has to consider is what is the actual evidence on the record with regard to the state of her health at the time she made her will and if that evidence is clear that there was nothing seriously wrong with her health the Court cannot presume that she was liable to be influenced or should feel suspicious about the making of the will. AIR 1956 Bom 404 (407) (DB).

(13) The existence of undue influence in any particular case must be established as a fact. It is not sufficient for that purpose to merely show that a person has power unduly to overhear the will of the testator. It must also be shown that the power had been actually exercised and it was by means of the exercise of that power that the will was obtained. AIR 1956 Madh B 246 (249) = ILR (1956) Madh B 227 (DB)*AIR 1960 Cal 551 (554) (DB) * AIR 1953 Cal 471 (473) = ILR (1955) 1 Cal 55 (DB) * ILR (1952) 2 Cal 56 (63) (DB).

(14) Where there appeared motive and opportunity for the exercise of undue influence by persons relying upon a will and some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer degree held that circumstances of that character would lead the Court to scrutinize with special care the evidence but in order to set it aside there must be clear evidence that the undue influence was in fact exercised. (1911) 38 Cal 355 (367)= 38 Ind App 13 (PC).

(15) Where testator lived for nearly three years after the execution of the will and the attesting witnesses deposed that he was in sound disposing mind when he executed the will the fact that he was almost blind and the defendant to whom he had bequeathed the property had been living with him for a long time would not be sufficient to justify a finding of undue influence or lack of proper dispositive mind. A I R 1961 Punj 411 (414) (DB).

(16) Mere physical presence of a legatee at the time of the execution of the will or giving extra share to propounder is not a circumstance to arouse susicion about disposing capacity of the testator or his free will or make the Court think that undue influence was brought to bear on the testator. AIR 1952 Orissa 159 (160) (DB).

(17) An attestor taking benefit under the will is only a legatee taking benefit under the will and he merely attests it in token of his witnessing its execution. That circumstance cannot lead to the inference that he exercised any influence on the mind of the testator. (1948) 53 Mys H C R 80 (102) (DB).

(18) Undue influence cannot be presumed from foolish and heartless nature of testator's dispositions. AIR 1924 P C 28 (33).

(19) Mere disinheriting one heir and preference of other who was actively concerned with management of the estate of the deceased testator is not enough to establish undue influence. AIR 1930 Rang 43 (44) =7 Rang 720 (DB).

(20) Because a testator bequeathed all his property to his brother with whom he had been residing it cannot be said that the testator who was weak was also so enfeebled by disease as to forget his other relations. AIR 1953 Madh B 246 (248)=ILR (1956) Madh B 227 (DB).

(21) Non-revocation of will by the testator during his lifetime indicates that will was not executed under undue influence. AIR 1960 Cal 551 (553) (DB).

(22) Registration of the will is not conclusive proof of the testamentary capacity of the testator nor is it conclusive proof of want of undue influence. (1955) 8 Sau L R 110 (116).

(23) Will in favour of person in attendance on testator—He must show that will originated in testator's own desire in order to remove suspicion that he himself had suggested and prepared it. (1910) 5 Low Bur Rul 141 (144) (DB).

(24) Person appearing before Judge as accused —Such person executing will in his presence— Will cannot be attacked on ground of undue influence. AIR 1935 All 425 (427) (SB).

5. Persons in fiduciary position. — (1) If a donee or a legatee occupied a fiduciary relation to the donor, there is a presumption of undue influence irrespective of whether fraud has or has not been committed. (1958) 2 Andh W R 654 (656) (DB).

(2) *A* and her sister *B* who had been brought up in the house of their uncle *C* and were under his influence executed a sale deed in his favour for an inadequate consideration. After the death of *B*, *A* sued to recover the property conveyed by the sale deed — Held that *C* stood in a fiduciary position towards *A* and *B* and therefore the sale-deed was null and void as regards the share of both *A* and *B*. AIR 1918 Bom 93 (94) = 43 Bom 173 (DB). (Case under S. 88, Trusts Act.)

6. Husband and wife.—(1) If there is no evidence to show coercion in the special matter of codicils general assertions of the wife's com-

Section 61—Note 6 (contd.)
manding character and the husband's weakness and of wrangling about expenses went for little. (1898) 22 Bom 17 (28)=24 Ind App 148 (PC).

(2) In transaction between a Mahomedan husband and his purdanashin wife the burden of proving the reality and the bona fide of the transactions is upon the husband. (1867) 11 Moo Ind App 551 (584, 585) (PC).

(3) Where a wife under pressure from husband did sign a document which was very different from what she supposed it to be and a document of the true nature of which she had no conception. the document is open to the objection of having been obtained by pressure and concealment of material circumstances and is not binding on the wife. (1902) 6 Cal W N 809 (815). (Deed giving security.)

7. Pardanashin ladies.—(1) There is no absolute rule of law that a gift by a pardanashin lady cannot stand unless it is proved that the lady had independent advice. On a review of the circumstances relevant to the issue whether the grantor thoroughly comprehended and deliberately and of her own free will carried out the transaction; if the conclusion is that the obtaining of independent advice would not really have made any difference in the result, then the deed ought to stand. (1914) 36 All 81 (91, 92)= 41 Ind App 23 (PC).

(2) In case of deeds, and powers executed by pardanashin ladies, it is requisite that those who rely upon them should satisfy the Court that they have been explained to and understood by those who executed them. (1912) 34 All 455 (462)=39 Ind App 156 (P C).

8. Proof. — (1) The burden of proof that a will is genuine lies upon the person who sets up the will and not upon the person who is prepared to impeach it. (1901) 23 All 405 (413)=28 Ind App 186 (PC).

(2) The party who puts forward a document as the will must establish that the testator was competent to make it and he executed it. (1955) 8 Sau L R 110 (115) * (1958) 2 Andh W R 654 (655 , 656) (DB).

(3) The propounder of a will is required to show that the will was signed by testator and that he was of sound and disposing state of mind and he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of these factors is disinterested and satisfactory the Courts would be justified in making a finding in favour of the propounder and he may be taken to have discharged the onus that lay on him as regards the proof. (1967) 12 Law Rep 92 (97) (DB) (Mys).

[See also AIR 1965 Him Pra 62 (63).]

(4) Even in an ex parte case it has got to be proved not merely that a testator signed a will which was then attested by some others but also that the will came from the testator's own desire and not from somebody else's desire. There must be some evidence to this. It cannot be presumed. Burden is on propounder. AIR 1951 Kutch 20 (22).

(5) Where a will is challenged propounders have to show not only that it was executed but that it was executed by the testator intelligently and that he had a sound disposing mind and after they have put forward their evidence it is for the objectors to break that evidence down. AIR 1929 Oudh 178 (185) * (1967) 11 Law Rep 734 (747) = I L R (1967) Mys 848 (DB).

(6) The standard of proof to establish a will is that of a prudent man and not an absolute or conclusive one. The presumption against misconduct is not without its due weight as a circumstance of improbabiliy, though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable. Though it is desirable that all the attesting witnesses capable of being called should be examined to remove all suspicion of fraud, it is not absolutely necessary that where there are many attesting witnesses, the absence of every one not called should be specifically explained. AIR 1922 Cal 260 (266) = 49 Cal 132 (DB).

[See also AIR 1960 Cal 551 (554) (DB).]

(7) The onus probandi lies on the person setting up a will to show that the will is natural and in full accord with the feelings, sentiments and tenor of the life of the testator and that it was the last will of the testator. He has to establish both the elements before he can hope to get the decision in his favour. That the will is reasonable or proper in terms or even that it expresses natural inclinations or desires of the alleged testator will not, by itself, be sufficient. AIR 1959 Andh Pra 360 (362) (DB).

(8) The onus probandi lies upon the propounder to satisfy the conscience of court that the instrument so propounded is the last will of a free and capable testator. AIR 1960 Cal 551 (554) (DB) * AIR 1958 Madh Pra 86 (87) (DB) * AIR 1955 N U C (Bom) 5312. (No burden lies on the propounder to prove absence of undue influence.) * * 1968 Ker L J 123 (145, 146) * * AIR 1966 Andh Pra 305 (307, 308) = (1965) 2 Andh L T 187.

(9) Where the caveator alleges that the will is procured by fraud, undue influence or coercion etc., it is for him to prove these allegations. AIR 1966 J & K 75 (80) = 1965 Kash L J 337 * * AIR 1971 All 304 (307) * * AIR 1962 Andh Pra 178 (187) (DB). (Mere presence of motive and opportunity is not enough.)

[See also (1967) 12 Law Rep 92 (98) (DB). (Mys). (Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court.)]

(10) Assertion that the will was made by the testator implies the proposition that the testator knew and approved of the contents of the will. Hence that proposition is also a part of the burden of proof assumed by everyone who propounds a document as a will. (1955) 8 Sau L R 110 (115).

[See also (1970) 1 Mad L J 252 (254) * * AIR 1951 Orissa 236 (237) = 17 Cut L T 38. (Onus is all the greater when the propounder takes a benefit under the will.)]

(11) Onus probandi is in general discharged by proof of capacity and the fact of execution from which the knowledge and assent of its contents by the testator will be assumed. I L R (1952) 2 Cal 56 (62) (DB) * AIR 1955 N U C (Assam) 2304 * (1955) 8 Sau L R 110 (115) * AIR 1929 Cal 484 (489) = 56 Cal 390 (DB).

(12) There is no inflexible rule that when a testator of a competent mind has had his will read over to him and has thereupon executed it all further inquiry is shut out. In cases where

Section 61 — Note 8 (contd.)
the ingredient of fraud enters, it is impossible to lay down any clear and unyielding rule like this. (1875) 7 H L 448 (469).

(13) In determining credibility of witnesses Court need not confine itself to the way they had deposed; it is open to it to consider the surronding circumstances. AIR 1965 S C 354 (357) = (1964) 6 S C R 814.

(14) If a will has been prepared and executed under suspicious circumstances the onus will lie on the propounder to remove the suspicion and to prove affirmatively that the deceased testator knew and approved of the contents of the will. ILR (1952) 2 Cal 56 (62) (DB) ** AIR 1960 Cal 551 (554) (DB) ** AIR 1955 N U C (Assam) 2304 **(1955) 8 Sau L R 110 (115)**AIR 1929 Cal 484 (489)=56 Cal 390 (DB). (Presumption as to testator's knowledge of the provisions of the will arising on the proof of execution of the will by him is liable to be rebutted by proof of suspicious circumstances, such as the testator's want of education, physical infirmity etc.) ** AIR 1965 S C 354 (356, 357) = (1964) 6 S C R 814 ** (1970) 1 Mad L J 252 (254) ** (1970) 74 Cal W N 290 (298) (DB).

[See also (1970) 74 Cal W N 290 (Deprivation of wife from properties of testator by itself will show that the will is so unnatural as to create suspicion against genuineness of document.) ** 1970 Pat L J R 342 (352) (DB) ** (1967) 11 L R 734 (747) = ILR (1967) Mys 848 (DB) ** 1967 Raj L W 456 (460). (Suspicious circumstances attending execution — Quantum of proof of execution are questions of fact — Test of proof is satisfaction of prudent man.)]

(15) Onus is on the propounder to satisfy the Court that the will is not only the physical but also the mental act of the testator. Where suspicious circumstances are not capable of any reasonable explanation, oral evidence of execution and attestation will not be treated as sufficient to dispel the suspicions in the mind of the Court. AIR 1966 J and K 75 (80) = 1965 Kash L J 337.

(16) Presence of suspicious circumstances makes the initial onus on propounder to prove will heavy; and unless it is satisfactorily discharged Court should be reluctant to treat document as last will of testator. 1973 W L N 65 (71) (Raj).

(17) Every inaccurate recital in a will does not expose it to suspecion. What creates suspicion is such a recital to which a testator of sound mind could not have been a party. (1967) 11 Law Rep 734 (747) = ILR (1967) Mys 848 (DB).

(18) Registration of a will is nowhere prescribed by law. Mere non registration would not make a will suspicious, so long as there is satisfactory evidence to prove the testamentary capacity and disposing state of mind of the testator and the execution by him of his free will. (1967) 12 Law Rep 92 (106) (DB).

(19) Testator dying within few hours after execution of will—Non mention of actual illness from which he was suffering does not create suspicion as to genuineness of the will. AIR 1962 Andh Pra 178 (184) (DB).

(20) Where a will which has not been registered during the life time of the testator and has not seen the light of day for about three years after the testator's death, something more is required to be proved than the bare and formal proof of execution and attestation by calling only a few of the persons connected with it. The scribe in such cases is the most important witness, and when he and the propounder of the will are not examined as witnesses, such non-examination cannot but raise grave suspicions in the mind of the Court as to the genuineness and bona fides of the will. AIR 1951 Orissa 236 (238)=17 Cut L T 38.

(21) Fact that no adequate provision is made for the wife and none for the daughter taken along with the fact that the testator used to sign blank paper is a very suspicious circumstance militating against the genuineness of the will. AIR 1966 J and K 75 (83) = 1965 Kash L J 337.

(22) An old widow, who had no other near relations in her husband's family would be having a natural affinity with her own nephews or nieces. A will in favour of nephews looked at from this angle cannot be characterised as an unnatural one. 1973 W L N 65 (75) (Raj).

(23) Where a person who has been enfeebled by a painful illness and had been suffering great pain for some months before the will was executed is led into the belief that his wife was neglecting him and where the testator's father and brother did not write to her about his health and send her any moneys to come down to him, though the testator asked them to do so, and the testator thereby conceived an unreasonable dislike of his wife brought about by the machinations of those who were near him — A will leaving a meagre maintenance to his wife, whom he loved very affectionately all through his life, is not valid. AIR 1927 Mad 295 (297, 298).

(24) Where the propounder is the principal beneficiary under a will and has taken a leading part in procuring its registration and execution, the circumstances are such as would excite suepicion and would require examination of the evidence with vigilance. The propounder is not entitled to probate unless the evidence removes such suspicion and clearly proves that the testator approved of the will. AIR 1930 P C 24 (25) = 57 Ind App 96 * AIR 1961 Cal 359 (363) (DB) * AIR 1958 Madh-Pra 86 (87) (DB) * AIR 1956 Madh B 246 (248)=ILR (1956) Madh-B 227 (DB) ** (1955) 8 Sau L R 110 (115) ** ILR (1953) 3 Raj 41 (44) * AIR 1930 Bom 539 (541) (DB) * (1905) 29 Bom 530 (559, 560)=32 Ind App 142 (PC) * AIR 1932 Cal 574 (576) (DB).

[See also (1970) 1 Mad L J 252 (261) ** 1970 Pat L J R 342 (362, 363, 364) (DB).]

(25) When the writer of a will has taken a very active part in the preparation of the will under which he gets a substantial advantage, the propounders of the will must prove that the testator was aware of the contents of the will. Benefit need not be a pecuniary benefit, a legacy, for instance, more or less of a substantial nature. AIR 1929 P C 45 (46, 47) = 56 Ind App 62=8 Pat 382 ** AIR 1918 P C 306 (307) ** (1958) 2 Andh W R 654 (655) (DB) * (1903) 1 Ch 27 (50, 51, 52).

(26) Law requires that a person taking active part in the preparation of a will and is benefited under it, to the disadvantage of other legatees, should satisfy the Court that he has taken no undue advantage nor exercised any undue influence on the testator for his own benefit. AIR 1952 Orissa 159 (160) (DB).

(27) Where the propounder of the will is the only helper, companion and also the Mukh-

62. Will may be revoked or altered. — A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.*

[1865—S. 49.]

[*] This section applies to the wills of Hindus etc. — See Sch. III.

Section 61—Note 8 (contd.)

tyaram of certain lady, attending on her in her illness and with none of her relations to advise her, gets her to execute a will in his own favour in respect of a very substantial property at a time when she is afflicted with a long illness and is far away from her home, having been taken there by the mukhtyaram himself to be away from the heir of her husband who was entitled to the property:— Held that it was a clear case of undue influence, compulsion or fraud and it was highly imperative that the propounder proved the will to be the expression of a genuine and voluntary desire on the part of the lady to bequeath her property in his favour. AIR 1951 All 386 (390) (DB).

(28) The mere living of the testatrix with her daughter a beneficiary under her will, cannot possibly raise any suspicion when such living is satisfactorily explained, and especially when the testatrix is not an illiterate person. AIR 1956 Bom 404 (407) (DB).

(29) On proving execution of a will with due solemnities by a person of competent understanding and apparently a free agent, the burden of proving that it was executed under undue influence is on the party who alleges it. AIR 1955 S C 363 (364) = 1955.1 S C R 1035 * AIR 1957 Ker 115 (117) = ILR (1957) Ker 346 (DB) * AIR 1956 Bom 404 (407) (DB) * AIR 1956 Madh B 246 (249) = ILR (1956) Madh B 227 (DB) * ILR (1952) 2 Cal 56 (63) (DB) ** (1970) Pat L R 342 (364) (DB).

(30) For the objector it is not enough to show that there was motive and opportunity for the exercise of undue influence. It must be shown that the evidence discloses circumstances which cause the Court to suspect that this was not the last true will of the testator and that, that evidence has not been displaced by the person upon whom rests the burden of displacing it. AIR 1930 Bom 539 (541) (DB).

(31) Where a will is registered by the testator, it will be a strong circumstance to support its genuineness. The same however, cannot be said of a will which is registered after his death, or without his knowledge. Mere fact that the signature appearing on the will is a genuine one, does not by itself, prove the genuineness of the will, where the execution of the will is shrouded by suspicious and unnatural circumstances. AIR 1966 J & K 75 (80) = 1965 Kash L J 337.

Section 62 — Synopsis

1. Revocation of will.
2. Joint will—Revocation of.
3. Destruction or loss of will—Effect.
4. Suit for cancellation of will.

1. Revocation of will. — (1) A testamentary intention is ambulatory till death and a will is in its nature a revocable instrument. AIR 1959 Pat 585 (587) * AIR 1949 PC 151 (154)=ILR (1949) Bom 284 * AIR 1947 Pat 449 (452) (DB)* (1905) 27 All 14 (15) (DB).

[See also (1910) 33 Mad 304 (307) (DB).]

(2) If an instrument is on the face of it of a testamentary character, the mere circumstance that the testator calls it irrevocable does not alter its quality. A testator who makes his testament and last will irrevocable may yet revoke it. (1909) 10 Cal L J 644 (645) (DB).

(3) Where a deed was a unilateral one in which no consideration passed from the beneficiaries to the persons executing it and the latter in dividing the property in equal shares among the beneficiaries who were their nephews, merely expressed their wishes regarding what was to happen to their property when they died and the purpose for which they executed the document was to avoid family disputes after their death. Held, that there being nothing in the document by which the executants purported to bind themselves to make no alteration in their disposition of the property, the document could not be regarded as irrevocable. AIR 1947 Pat 449 (454) (DB).

(4) Mere expression of intention to revoke a will at some future date cannot amount to revocation. AIR 1938 Mad 616 (617).

(5) Hindu will though not signed by testator or attested will, if proved to be the last will, operates to revoke the previous registered will. AIR 1927 All 497 (498)=50 All 314 (DB).

2. Joint will — Revocation of. — (1) Where the mother and daughter, the only members of a thavazhi, execute a joint will in respect of their common properties, such a joint will can be revoked by either of them during the life time of both or by the survivor on the death of one of them. 1950 Trav-Co L R 384 (386) (DB).

(2) Where a mutual will made by husband and wife is separable, the disposition of each spouse can be treated as applicable to his or her share of the joint property and each spouse was at liberty to revoke his or her part of the will during the co-testator's life-time without communication with the co-testator or after the co-testator's death. AIR 1947 Pat 449 (452) (DB).

(3) Where by will both the executants, husband and wife, were devising the property of which each was the owner, in the first instance, to whoever survived and thereafter both of them devised the property belonging to them to the petitioners. and where the terms of the will showed that the wife asserted absolute ownership in the house and co-ownership in the money deposits in the Banks. Held that on the death of the husband, the wife could revoke that part of the will by gifting away the house to another during her life time. The will would operate according to the tenor so far as it was the will of the husband and so far as it disposed of the half share in the Banking accounts. AIR 1960 All 126 (130, 131) (DB).

[See also AIR 1964 Mad 291 (298)=(1964) 2 Mad L J 545 (DB).]

(4) Clause in joint will providing that if testators do not agree to revoke will its provisions shall be final — Effect of the clause after death of one of the testators is to take away the other testator's inherent power of revocation. (1964) 1 Ker L R 4 (6).

CHAPTER III

OF THE EXECUTION OF UNPRIVILEGED* WILLS

63. Execution of unprivileged wills. — Every testator, not being a soldier employed in an expedition or engaged in actual warfare, †[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules :—

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed‡ by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other§ person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign‡ the will in the presence of the testator,

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Section 62 *(contd.)*

3. Destruction or loss of will — Effect. — (1) There is a presumption that if a will traced to the possession of the deceased and last seen there is not forthcoming on his death, it is presumed to have been destroyed by himself animo-revo candi. In such a case, the paper is revoked. This presumption will have an effect unless there is sufficient evidence to rebut it. The presumption will be more or less strong according to the character of the custody. AIR 1946 Pat 24 (26)=24 Pat 395 (DB) * AIR 1940 All 175 (177) (DB).

[See also 1967 All W R (H C) 643 (647).]

[See however AIR 1953 Cal 597 (598) (DB). (Obiter.)]

(2) Loss of will does not operate as a revocation. AIR 1946 Pat 24 (27)=24 Pat 395 (DB).

4. Suit for cancellation of will.—(1) No suit for the cancellation of a will can lie so long as the testator is alive as he can at any moment during his lifetime, cancel his will and make a totally different disposition of his property. (1905) 27 All 14 (15) (DB).

[See however (1891) 15 Bom 697 (701) (DB).]

SECTION 63 — SYNOPSIS

1. Scope and applicability.
2. "Sign or affix his mark".
3. Will comprised of several sheets—Signature on.
4. "Shall affix his mark".
5. "Signed by some other person."
6. Proper attestation—What is.
7. Scribe as attesting witness.
8. Endorsement by Registrar.
9. "Has seen the testator sign."
10. Personal acknowledgment of his signature.
11. Proof of execution and attestation.

1. Scope and applicability.—(1) This section merely lays down formalities required to be observed in execution and attestation of a will and does not concern itself with question of proof. AIR 1918 Cal 78 (79) (DB).

(2) Unprivileged will can only be made in accordance with the provisions of S. 63. AIR 1940 Bom 400 (402).

(3) Execution under S. 50 of old Act includes the testator's signature and the attestation by witnesses and so long as there is no attestation the will is not executed. AIR 1925 Oudh 337 (344)=28 Oudh Cas 8 (DB) ** AIR 1915 Oudh 187 (188) (DB).

(4) Due execution of will implies testamentary capacity and knowledge and formal execution and attestation. AIR 1966 All 570 (575)= ILR (1965) 1 All 483.

(5) Will prepared under direction of testator — Attestors attest it and testator affixes his thumb mark in presence of attestors—Execution is complete. AIR 1921 Bom 156 (157) = 45 Bom 989 (DB).

(6) Will executed without attesting witnesses and deposited in Registrar's office but taken out at Registrar's office ten years afterwards in presence of witnesses who signed same in proper places, sufficiently satisfies provisions of S. 50 and must be taken as having been executed and registered on same day. AIR 1914 Oudh 52 (60) (DB).

(7) This section applies to Hindu wills; hence no oral will would legally be made by a Hindu after January 1927. (1940) 42 Pun LR 326 (328) (DB).

[See however AIR 1928 Mad 1279 (1281) = 52 Mad 160].

(8) Act applies even to wills made by Talukdars whose names are found in lists made for approval but not yet approved. AIR 1931 P C 24 (26).

(9) Will executed by occupancy raiyat of Urban tribe will take effect if executed only after obtaining sanction of the Deputy Commissioner as required by S. 46 (3) of the Chota Nagpur Tenancy Act (VI of 1908), as amended by the amending Act (II of 1938). 1967 B L J R 167 = ILR 46 Pat 656 (659).

(10) A will need not be in any particular form. ILR 1954 Trav Co 419 (424) (DB) * AIR 1954 Trav Co 197 (197).

(11) Under S. 63 the first condition requisite to render valid any testamentary disposition is that such disposition should be 'in writing' though no particular form is required. The next condition prescribed for the validity of a will is that it should be duly signed by the testator. The third statutory requisite is that it should be

but it shall not be necessary that more than one witness be present at the same time,*† and no particular form of attestation shall be necessary.*‡

[1865—S. 50.]

[*] For privileged wills see Ss. 64, 65 et seque infra. This section applies to the wills of Hindus etc. — See Sch. III infra.

[†] Inserted by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I.

[‡] and not 'mark.'

[§] that is not only some person other than the testator, but also some person other than the attesting witness.

[*†] Both the witnesses need not be present when the testator signs or acknowledges. In the case of a privileged will whether written or oral, both the witnesses have to be present at one and the same time. — See S. 64 infra.

[*‡] When the testator does not himself sign the will but some other person signs the will for him in his presence and at his direction, then there must be three persons in addition to the testator himself. Word 'will' must include a 'codicil' here — Otherwise there would be no rule as to the execution of the codicil.

Note:— Scottish law recognises another type of will which is called the Holograph Will that is a will written and signed by the testator himself. It does not require any witnesses and is probative without witnesses.

Section 63 — Note 1 *(contd.)*

attested by at least two witnesses. According to S. 63, the testator must sign or affix his mark to the will, or it must be signed by some other person in his presence and by his direction. AIR 1962 Andh Pra 54 (55) (DB).

[See also AIR 1961 Orissa 180 (182) = I L R (1961) Cut 234 (DB).]

(12) Joint wills are all along recognised in all jurisdictions. ILR (1954) Trav Co 419 (424) (DB).

[See also (1964) 1 Ker L R 4 (5). (Two wills by husband and wife with respect to their properties rolled into one — Will is joint.)]

(13) The law requires that the provisions of S. 63 should be complied with. This compliance can be proved either by means of oral evidence or in any other manner. AIR 1956 Punj 145 (146) = ILR (1956) Punj 157.

(14) S. 63 has no retrospective operation. AIR 1960 Punj 257 (258) = I L R (1958) Punj 1852 ** AIR 1957 Punj 146 (148, 149) = I L R (1957) Punj 418.

(15) Will made in 1914 — Before 1-1-1917, so far as wills made by Hindus in Punjab were concerned, no legal formalities were required to effectuate the same — In the case of such a will, requirements of S. 63 need not be complied with. AIR 1963 Punj 208 (213) = I L R (1962) 2 Punj 887.

2. "Sign or affix his mark."— (1) The fact that a person who can sign his name makes a mark would not affect the validity of the will. But in such a case the evidence as regards the execution should be scrutinised with great care. AIR 1926 Bom 355 (355, 356) (DB).

(2) Where a person who was unable to read and write was in the habit of using a name stamp and the stamp used to be kept by a servant and under his directions, the servant used to attach it to any document, the execution of will by the name stamp under the master's orders was proper and came strictly within S. 50. (1898) 25 Cal 911 (917) (DB).

(3) Testator putting his signature in three places in typed will amongst testamentary clauses—Section 63 (b) held complied with. AIR 1963 Punj 66 (70).

3. Will comprised of several sheets—Signature on.—(1) Where will is wholly in handwriting of deceased and bears his signature on various pages thereof and alongside his signature on top of left-hand corner of first page are signatures of four witnesses and on each of other three pages, signatures of two out of those four persons, signature of testator on first page is operative signature by which he intends to make document effective. Witnesses put their signatures animo attestandi and will was properly executed by deceased. AIR 1916 Cal 630 (632) (DB).

(2) Where each of the several sheets of a will is not signed or initialled but there is one signature at the end made with the intention of authenticating the whole instrument, such a signature is sufficient. It will be presumed that all sheets were put together in the same order at the time of execution as at the testator's death. (1909) 10 Cal L J 644 (646) (DB).

4. "Shall affix his mark."—(1) Unprivileged will is not duly executed under S. 50 of old Act where testator who cannot sign his name simply touches pen and hands it to some one to affix his mark. He should affix mark himself though he is allowed under S. 50 to get will signed for him by substitute. AIR 1917 Mad 900 (901) = 40 Mad 550 (DB).

[See however (1896) 6 Mad L J 209 (210).]

(2) Execution of will — Thumb impression — Generally impression of left thumb to be taken —Practice at certain place of taking right thumb impressions of females to be proved. AIR 1971 All 304 (316).

(3) To constitute a direction it is not necessary that anything should be said. If a testator in making his mark is assisted by some other person and acquiesces and adopts it, it is just the same as if he had made it himself. AIR 1915 Cal 756 (757) (DB).

5. "Signed by some other person."—(1) The words 'some other person.' mean some person other than any of the attesting witnesses. (1874)

Section 63—Note 5 (contd.)
11 Bom H C R 87 (88) ** AIR 1917 Mad 900 (901) =40 Mad 550 (DB) ** (1883) 9 Cal 226 (229) (DB).

(2) When an execution of a will by a person other than the testator in his presence and by his direction takes place, it is sufficient for that other to affix the signature of the testator himself. Section does not require that the other person executing the will under the direction of the testator must sign in his own name with sufficient indication to show that he has executed it under the testator's direction. AIR 1934 Mad 436 (446, 447) = 57 Mad 979 (DB).

(3) Provided the person who signs in the presence and by the direction of the testator at proper place the provisions of the section are complied with, and it does not matter whether there are other words written by that person so long as those words do not destroy the effect of the signature. AIR 1921 Bom 156 (157, 158) = 45 Bom 989 (DB).

(4) The proper form of signature is for the other person to sign the name of the testator and not his own. Therefore, where some other person signs for the testator by writing out the testator's name in his presence and by his direction, it would amount to due execution within S. 63. AIR 1962 Andh Pra 54 (55, 56) = (1961) 2 Andh W R 162 (DB). (Scribe signing the name under testator's direction. There is compliance of testator with S. 63 (a).)

[See also (1968) 34 Cut L T 874 (880). (The signing of a will through the pen of the scribe is in conformity with S. 63.)

(5) Where an illiterate testator admits the execution of a will before a Sub Registrar and affixes his thumb impression thereto, there is proper execution of the will. AIR 1962 Andh Pra 54 (56) (DB).

6. Proper attestation—What is.—(1) English decisions can be relied upon for coming to a conclusion as to what is meant by attestation under the Indian law. AIR 1946 Cal 168 (175) = ILR (1944) 2 Cal 388.

(2) The word "attestation" means an act in relation to the execution of the instrument. That act must be done with the intention of attesting the executant's signature. 1969 Ker L J 562 (567, 569) = 1969 Ker L T 656 (DB).

(3) Attestation consists in required number of witnesses (at least two) seeing the testator sign the will and their signing in the presence of testator. ILR (1972) 2 Delhi 699 (706) (DB).

(4) The object of attestation is for the testator to know that he has ocular evidence of the instrument having been subscribed by the witnesses, in so far as the attesting witnesses are concerned, the only statutory requisite is that they should have the necessary animus attestandi or intention to attest the document. In fact, the proposition that if one of the attestors speak to the signature of the testator,—then it is enough and no further probe is necessary to satisfy whether the signature as acknowledged has been affixed. (1968) 1 MLJ 356.

(5) Attesting is more than merely signing on the will. It means signing a document for the purpose of testifying to the signature of the executant. Therefore, even if a person sees the testator sign and signs the will after seeing the testator sign and in the presence of the testator he would not be an attesting witness unless he puts his signature on the will animo attestandi. AIR 1946 Cal 168 (171, 173) = ILR (1944) 2 Cal 388 ** AIR 1956 Him Pra 58 (59) ** AIR 1952 Punj 237 (237, 238) ** AIR 1936 Lah 367 (367).

(6) In order to be an attesting witness a person need not only see the execution and sign in the presence of the executant but must also sign as a witness. AIR 1950 Cal 401 (405) = 1LR (1951) 1 Cal 34 (DB).

(7) Will must be attested by two or more witnesses each of whom has either seen testator sign or affix his mark to will or has received personal acknowledgment of his signature or mark from testator. Besides this, it is necessary that each of witnesses should sign will in presence of testator. It is not essential that more than one witness should be present at one and same time. AIR 1945 Lah 3 (8, 9) = 1LR (1944) Lah 495 (DB) ** (1955) Madh B L J (HCR) 428 (433) (DB) ** AIR 1952 Trav-Co 195 (197) (DB) ** (1881) 6 Cal 17 (19) (DB) ** AIR 1925 Mad 861 (868). (Witnesses need not attest in each other's presence.) ** AIR 1915 Cal 756 (757, 758) (DB).

[See also AIR 1957 Raj 180 (181) = ILR (1955) 5 Raj 971 (DB). (It cannot necessarily be presumed from the fact that the signature of the witness appeared at the end of the will that he must have signed in the presence of the testator.)]

(8) Attestations on mere assuarance are of course, quite illegal and contrary to S. 63 but they are not so uncommon nor so rare as to be ruled out. AIR 1971 All 304 (314).

(9) On the proof of the signature of the deceased or his acknowledgment that he has signed the will he will be presumed to have known the provisions of the instrument he has signed; but the said presumption is liable to be rebutted by proof of suspicious circumstances. What circumstances are suspicious is a question of fact in each case. AIR 1959 SC 443 (459) = 1959 Supp 1 SCR 426.

(10) For a valid attestation it is not necessary that the will itself must contain something to indicate that person concerned signed as attesting witness and omission, lacuna or insufficiency, if any, in that behalf can be supplied by other evidence. ILR (1966) 1 Cal 408 (411) (DB).

(11) Attestation after acknowledgment by testator that he executed the will. It is sufficient attestation. AIR 1963 Punj 66 (70).

(12) Where the attesting witnesses affixed their initials at the time of witnessing the execution of the will, it was held to be a sufficient attestation (1892) 15 Mad 261 (264) (DB).

(13) Will is validly attested even where either of two necessary attesting witnesses has merely affixed his mark to the will. AIR 1936 All 576 (578) = 58 All 1064 (FB) ** AIR 1954 Pat 360 (363) (DB) ** AIR 1953 Nag 266 (267) ** AIR 1952 Assam 93 (94) = ILR (1952) 4 Assam 141 (DB) ** AIR 1937 Bom 389 (391, 392) (DB).

[But see (1885) 11 Cal 429 (432) (DB). (Case before the passing of General Clauses Act, 1897.)]

(14) Mere signatures of witnesses towards the end of an instrument or somwhere on an instrument are quite sufficient to show without explanation, that the witnesses put their signatures by way of saying that they had seen the document being executed and had received an acknowledgment. It is not necessary for them to state that they put their signatures in the

Section 63—Note 6 (contd.)
presence of the testator. AIR 1972 Pat 214(215)= 1972 BLJR 256 (DB).

(15) A will after having been executed but without having been signed by any attesting witnesses was deposited in a sealed cover at the office of the Sub-Registrar. About ten years later, the executant went to the Sub Registrar's office, took out the will from the sealed cover and formally presented it for registration as a will and admitted its execution in the presence of attesting witnesses and these witnesses as well as the executant himself signed the document in proper places. Held, that will is properly attested. AIR 1914 Oudh 52 (60) (DB).

(16) A pleader signed the endorsement of presentation made on the cover as an identifier as required by S. 43, Registration Act. On the cover was a superscription in Oriya, signed by the testator where the testator said 'I do execute this last will'. Held, (Per Kulwant Sahay J.) that the pleader could be considered as an attesting witness (Contra Per Macpherson J.) That the pleader was purely a witness to the deposit of the will and had no animus attestandi. A I R 1929 Pat 401 (403) = 8 Pat 419 (DB).

(17) A will was executed by two executants who affixed their thumb impressions and against their thumb impressions one P signed on behalf of the executants. One K signed the will as a scribe and he stated that he read over the contents to the executants. He did not state under his signature that he attested the signature of the executants. The signature of one L also appeared on the will, but his signature was from the pen of K, and there was a mark below it. There was no evidence that this mark was by L. He was dead before proceedings were started in Court. Held, that the will was not properly attested. AIR 1941 Pat 368 (369) (DB).

(18) Genuineness of a will cannot be challenged because it was attested by a servant of the family, on the theory of improbability, specially when it was also attested by another responsible person. AIR 1953 Nag 316 (325)= ILR (1953) Nag 144 (DB).

(19) It cannot be laid down as a matter of law that because the witnesses did not state in examination-in-chief that they signed the will in the presence of the testator, there was no due attestation. It will depend on the circumstances elicited in their evidence. This is a pure question of fact. AIR 1955 S C 363 (367) = 1955 SCR 1035 ** AIR 1961 Orissa 180 (182, 183,= ILR (1961) Cut 234 (DB) ** AIR 1956 Punj 145 (148) = ILR (1956) Punj 157 **1966 Raj L W 197 **AIR 1965 Punj 140 (142) = 66 Pun L R 1130. (AIR 1951 Punj 305 Held no longer good law.)

[But see AIR 1955 NUC (Punj) 1618**AIR 1951 Punj 305 (307) (DB).]

(20) A beneficiary in law is not incompetent to attest a will which gives him benefit. That is not a suspicious circumstance by itself which can justify revocation of a probate. (1955) 59 Cal W N 580 (586)**(1950) 28 Mys L J 124 (143) (DB).

(21) Will in question attested by more than two witnesses — Will read over to testator who after admitting it, giving her thumb impression in presence of attesting witnesses — Will signed and attested by another at request of testator — Other attesting witnesses also signing in presence of testator — Attesting witnesses testator's own servants and relations — Will held properly executed and attested. Failure to call witnesses in better positions is not a suspicious circumstance. AIR 1956 Pat 377 (382) (DB).

(22) Where before the signature of one B on a will there appeared the Devanagari letter 'ga' which is an abbreviation of the word "gawai" or witness and the signature of one S was preceded by the letter "da" which is an abbreviation of Dastkhat or "signed by" and B in his endorsement on the will had said that he was putting his signature at the instance of the testator and his son S : Held that, these circumstances were not sufficient for holding that S had signed the will as an executant or in lieu of his having given his consent to the execution of the will by the testator. ILR (1960) 10 Raj 1259 (1268) (DB). (1958 Raj L W 80, Reversed.)

(23) One witness signing will downstairs — Other on otla of adjoining house— Attestation is not according to law. 1955 Madh B L J (HCR) 1546 (1548) (DB).

[See also 1966 Raj L W 197. (One attesting witness failing to state that he saw the testator sign — Other evidence indicating that he must have seen him signing it—Attestation is proper.)]

(24) Will executed in foreign country in consulate office and the testator signed the will in the presence of the consul general and another— Signatures of consul general appearing in the printed form at the back with a note that consul general accepts no responsibility for its contents — Held there was proper attestation. ILR (1963) 1 Punj 7 (16).

(25) It is not necessary that an attesting witness must either sign himself or put a thumb mark on the document. If the witness is illiterate he can ask other person to sign for him. 1962 BLJR 939 (942).

7. Scribe as attesting witness. — (1) Scribe may be attesting witness to will but it must be shown that signature of scribe was put down for purpose of attesting document. AIR 1939 Cal 595 (596) (DB).

(2) A writer of a document who has seen its execution and put his signature at the end of it in his capacity as a scribe, cannot be treated as an attesting witness. AIR 1950 Cal 401 (405) = ILR (1951) 1 Cal 34 (DB). (No distinction between meaning of word "attested" as used in S. 59, T. P. Act and S. 63, Succession Act.)

(3) Where after the will and before the signatures of the testator and the attesting witnesses the scribe had written "dated.....in the hand of Sham Lal, deed writer . The subject-matter of the will has been read out to the testator and has been understood by him," Held, that looking at the place where the scribe had signed he was not acting as an attesting witness. He was nothing more than a scribe. AIR 1952 Punj 237 (237).

(4) A scribe not signing or attesting the will as a scribe is not a circumstance against the genuineness of the will. AIR 1953 Nag 316 (324)=ILR (1953) Nag 144 (DB).

(5) The question whether a scribe can be regarded as attesting witness has to be gathered from circumstances of each case, the main test being whether scribe signed document with intention of attesting signature of executant. The mere fact that the scribe wrote out entire

Section 63—Note 7 (contd.)
will does not necessarily lead to the conclusion. AIR 1956 Him-Pra 58 (60) ** AIR 1953 Cal 462 (463)=ILR (1955) 1 Cal 94 (DB).

[See also (1970) 74 Cal W N 290 (294) (DB)** AIR 1952 Punj 237 (237, 238).]

8. Endorsement by Registrar. — (1) Where a will bore an endorsement by the Sub-Registrar that the testatrix had admitted execution of the will to him, the endorsement was also signed by the testatrix, marking her mark "by the pen of the scribe": Held, that the signature of Sub-Registrar must be taken as an attestation and when so taken, the will must be held to be properly attested. AIR 1922 Pat 402 (404) =1 Pat 300 (DB)** AIR 1961 Punj 411 (414) (DB)**AIR 1958 Cal 440 (443) (DB) ** AIR 1953 Cal 462 (465)=ILR (1955) 1 Cal 94 (DB).

[See also AIR 1965 Punj 140 (142) = 66 Pun L R 1130 (DB)**(1885) 11 Cal 429 (433) (DB).]

(2) The Registrar who endorses on the cover containing the will but does not sign it, and copies the superscription and endorsement and signs the same in his Register No. 5 as required by S. 43, Registration Act, is not an attesting witness. AIR 1929 Pat 401 (403) = 8 Pat 419 (DB).

(3) Registration of Will not requiring registration — Sub-Registrar and identifying witnesses may become attesting witnesses if they conform to the law of attestation. AIR 1965 Ker 32 (34, 35)=1964 Ker L T 676.

(4) Registrar's certificate containing recital that testator admitted execution — Thumb impression of testator affixed — Recital in endorsement mentioning that signature could not be affixed because of testator's physical incapacity — Fact that testator was duly identified mentioned —But no signatures of identifying witnesses taken because soon after testator became unconscious —Endorsement held was admissible to prove execution. AIR 1962 Andh Pra 178 (183) (DB).

9. "Has seen the testator sign."—(1) Under the section it is sufficient if attesting witnesses had clear view of testator at the time of signing. They may not see that his fingers moved at the time. AIR 1920 Oudh 87 (92) (DB)**AIR 1920 Oudh 96 (102) (DB).

(2) Where at the time of signing will, testator and witness were in different rooms and there was no evidence on the record to show one could have seen other when he was signing declaration: Held that presumption cannot be made that testator and witness were in visual presence of each other while signing declarations. AIR 1928 Oudh 258 (259)=3 Luck 482 (DB).

10. Personal acknowledment of his sinature. — (1) It is sufficient if testator makes attesting witnesses understand that paper which they attest is his will though they do not see him sign it. (1913) 15 Bom L R 209 (216) (DB)** (1846) 4 Moo P C 419 (442)*AIR 1951 Kutch 84 (85)**(1900) 27 Cal 169 (171) (DB).

(2) A "personal acknowledment" of execution need not necessarily be restricted to an express statement to that effect, but may include words or conduct, or both, on the part of the testator which may be construed unequivocally as such an acknowledgment. AIR 1927 Mad 1054 (1056)=50 Mad 927 (FB)** (1968) 1 Mad L J 356 ** AIR 1965 Punj 204 (205) = 66 Pun L R 1208.

(3) There is nothing in Cl. (c) of S. 63 which enjoins that the communication of acknowledgment must be by express words and that it cannot be by implication. The section does not say that the conscience of the Court can stand satisfied only if a particular form or words are used by the testator. All that is required is that there must be an acknowledgment, that the acknowledgment must be personal, and that it must be of the signature or thumb mark. (1966) 7 Guj L R 421 (425).

(4) One may assume acknowledgment of signature from conduct provided it is clear beyond doubt. AIR 1957 Raj 180 (181) = ILR (1955) 5 Raj 971 (DB).

(5) There is nothing wrong for a testator to get the attestation of witnesses after acknowledging before them that he had executed and signed the will. It is not always necessary that the attesting witness should actually see the testator signing the will. AIR 1956 Andhra 1 (4) (DB).

(6) The statement of a witness that he signed the will on being asked by the testator to do so is not sufficient as an acknowledgment within S. 63 (c). AIR 1957 Raj 180 (181) = ILR (1955) 5 Raj 971 (DB).

(7) The acknowledgment by the testatrix that the document is her will is a sufficient acknowledgment of her signature and if the attestation by the attesting witnesses was made in the presence of testatrix, the attestation was sufficient in law. The mere fact that the acknowledgment by testatrix was in the form that the document was her will and that it was not in the form that it bore her thumb mark is not in itself a circumstance which must lead to the conclusion that the will was not executed in due form. (1966) 7 Guj L R 421 (425).

11. Proof of execution and attestation. — (1) The term 'executed' signifies the acts required of the person who makes the deed either himself or through a representative and the term 'attested' signifies the act of the witnesses who see the execution and the same person cannot possess the twofold capacity. If the execution is only through representative that representative cannot be competent attesting witness. AIR 1954 Pat 360 (363) (DB).

(2) In deciding whether the will was executed and attested as required by law, the Court is not concerned with the contents of the will and the dispositions made therein. AIR 1953 Nag 316 (320)=ILR (1953) Nag 144 (DB).

(3) Affixing thumb mark on will is not a necessary legal requirement of execution — Putting pen mark on document satisfies law about execution — Existence of thumb mark on back, no evidence of execution. AIR 1962 Pat 481 (483)=ILR 41 Pat 379 (DB).

(4) Where a will is propounded in answer to a claim of succession according to the personal law of the deceased, it has to be borne in mind that:—(1) The burden is on the propounder to prove due and valid execution of the will. (2) The propounder should show that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind; that he unerstood the nature and effect of the disposition and he put his signature to the document of his own free will. (3) Ordinarily when the evidence is uninterested, satisfactory and sufficient to prove the scund-

Section 63—Note 11 (contd.)
and disposing state of the testator's mind and the signatures required by law, Courts would be justified in making the finding in favour of the propounder. The onus on him can be taken to be discharged on proof of those essential facts. (4) If there are any suspicious circumstances surrounding the will, the initial onus becomes very heavy. (5) The propounder of the will has to remove the suspicions from the mind of the Court by cogent and satisfactory evidence. (6) The result of those principles always depends upon the facts and circumstances of each case and the nature and quality of the evidence. 1959 Jab L J 613 (679) (DB).

(5) An initial normal presumption is that the will containing the signature of testator was understood by him before he affixed his signature to it. But this presumption can be displaced by the surrounding circumstances. (1966) 6 Law Rep 422 (437).

(6) It is improper for a Court to start making all kinds of speculation as to the circumstances and suspicions which make it impossible that the will could have been executed. It is bound to consider the evidence regarding the execution and attestation and if satisfied with that evidence it must pronounce in favour of that will. AIR 1956 Mad 566 (570).

(7) Every presumption will be made in favour of due execution and attestation in the case of a will regular on the face of it and apparently duly executed. AIR 1939 Oudh 213 (222) (DB).

(8) Section 63 requires proof of the three things mentioned in sub-clauses (a), (b) and (c) of that section before a will can be said to have been duly executed — Execution of a will does not merely mean signing of it by testatrix or putting her thumb impression on the document but it means that all the formalities required and laid down by S. 63. (1973) 1 Cut W R 631 (635, 636).

(9) Section 63 places upon the propounder of a will the duty to satisfy the Court that the testator did sign or affix his mark to the will or authorised some other person in this behalf who signed the will in the presence of the testator that the signature was so placed, that it appeared to be intended to give effect to the writing as will and the will was attested as required by the section. 1971 Simla L J 70 (75, 76).

(a) Proof of execution

(10) A testator had no male issue but had only one minor daughter. His wife had predeceased him and he had not married a second wife. By his will he made provision for the marriage of his daughter out of certain specified part of his estate. The rest of his properties he gave to Thakurji. The will was not registered. It was also objected that it was an unnatural will. Held that the will in question was duly executed and probate should be issued. AIR 1954 S C 280 (282).

(11) What is necessary for valid execution of a will is that the will must be signed by the testator and it must be attested by two or more witnesses each of whom has seen the testator sign the will and further each of whom shall sign the will in the presence of the testator. If these requirements are satisfied then it must be held that the person propounding the will has duly proved the execution of it. (1965) 2 Mys L J 112 (115).

[12] In a case where due execution of a will is disputed the conscience of the Court must be satisfied. Respect must be shown to the view taken by the trial Court on an appreciation of oral evidence, as to whether due execution has or has not been proved. AIR 1955 NUC (Bom) 5317.

(13) Even an implied admission or non-denial by opposite party of due execution of a will may not justify dispensing with proof of the will by the propounder. Even an agreement or compromise as regards the genuineness and due execution of a will may not be enough for granting probate. The will must be proved even in such cases in some form before a probate could be granted. Its basis cannot be merely the consent of the parties. AIR 1955 NUC (Assam) 2304.

(14) The propounder has a more difficult task when proving the execution of a will than persons who have to prove execution of documents in cases other than those of wills. If he takes some benefit under the will, greater scrutiny and vigilance would also be indicated to any prudent man, this itself being a suspicious circumstance inherent in the transaction of will making. AIR 1955 NUC (Assam) 2304.

[See also 1970 Pat L J R 342 (355) (DB).]

(15) If a person taking an active part in getting a will prepared or executed gets a benefit under the will, the propounder must adduce the best evidence to remove suspicion regarding the will on account of such a circumstance. This principle, however, cannot be extended to an attestor who takes merely benefit under the will but has no hand in preparing the will. (1950) 28 Mys L J 124 (143) (DB).

(16) The Court has to be satisfied that the will propounded is the last testament of a testator who had full testamentary capacity—The circumstances under which the Court has to determine the question are peculiar to wills. AIR 1955 NUC (Assam) 2304.

(17) The mere fact that a will is not registered does not make it improbable, much less impossible that the will was executed. AIR 1956 Pat 377 (380) (DB).

(18) Where an illiterate testator admits the execution of a will before a Sub-Registrar and affixes his thumb impression thereto there is proper execution of the will. AIR 1962 Andh Pra 54 (57, 58)=(1961) 2 Andh W R 162.

(19) The question of the execution of a will is a question purely of fact and if on this point the lower appellate Court has given a clear finding that finding cannot be challenged in second appeal. AIR 1956 Punj 145 (145, 146) = I L R (1956) Punj 157.

[See also 1967 Raj L W 456 (460).]

(20) The execution of the will can be proved by approved circumstantial evidence. AIR 1970 Punj 182 (189). (AIR 1950 Mad 634, Foll.)

(b) Proof of attestation

(21) There can be no attestation before execution. AIR 1958 Andh Pra 280 (281) (DB).

(22) No particular form of attestation is required under the law. AIR 1954 Pat 360 (364) (DB) ** I L R (1960) 10 Raj 1259 (1268) (DB).

(23) The law as to attestation of wills is contained in S. 63 (c) and the mode of proving documents required by law to be attested is laid down in Ss. 68 to 72, Evidence Act. But there is no requirement that attesting witnesses should

Section 63—Note 11 (contd.)
identify each other or his signature. AIR 1966 All 570 (576) = I L R (1965) 1 All 483.

(24) No evidence that attesting witnesses signed in presence of testator — Attestation cannot be said to be proved. I L R (1964) Cut 27.

(25) The propounder has to prove not only that the signature on the will was that of the testator but also that the attestations were properly made as required by Cl. (c). It is not necessary to examine both or all the attesting witnesses if they had signed in each other's presence and they had received acknowledgment from testator. But if the attestations to the testator's signature were not made at the same time, it is necessary to prove that both the persons who put down their attesting signatures on different occasions had done so on the acknowledgment of the testator. In such a case the will cannot be admitted to proof on the evidence of only one of the attesting witnesses. AIR 1946 Bom 12 (16, 17)=ILR (1946) Bom 295 (DB).

(26) A will has to be proved like any other document except as to the special requirements of attestation prescribed by S. 63. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters. AIR 1959 S C 443 (451) = 1959 Supp 1 S C R 426 * * AIR 1964 S C 529 (531, 534, 535) * * AIR 1972 Pat 146 (154). (It would be idle to expect proof with mathematical certainty.) * * AIR 1969 Assam 118 (119) ** (1967) 66 Pun L R 233 (236) (Delhi).

[See 1967 Raj L W 456 (460)]

[See also AIR 1965 S C 354 (357, 358)=(1964) 6 S C R 814. (Where there are suspicious circumstances the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts it as genuine.)]

(27) In order to prove the due attestation of the will the propounder of will has to prove that A and B the two witnesses saw the testator sign the will and they themselves signed the same in the presence of the testator. AIR 1955 S C 346 (351) * * 1966 Raj L W 197.

(28) Absence of recital of attesting witness at the bottom of last page of will that testator signed in presence of witnesses and the witness also signed in presence of testator — These circumstances held created great suspicion relating to valid execution and attstation of the Will. (1970) 74 Cal W N 290 (297, 298) (DB).

(29) Strict affirmative proof of due attestation is not absolutely necessary and the Court ought to make reasonable inferences in the facts of the particular case. I L R (1952) 2 Cal 56 (65) (DB).

(30) In cases where the evidence of the attesting witnesses is not specific but vague or doubtful or even where it is conflicting upon the same material facts, the Court may take into account the surrounding circumstances of the cases and judge from the same, whether the requirements of the statute have been complied with. AIR 1953 Cal 462 (464) = I L R (1955) 1 Cal 94 (DB).

(31) Attestor giving evidence of attestation inadvertently omitting to say that he had attested will in the presence of testator, but narrating the sequence of events leading to the inference that he attested in the presence of testator—Omission, held, not to invalidate will. 1967 Raj L W 363 = A I R 1968 Raj 41 (43).

(32) Registered will — One attesting witness deposing that he did not see the testator sign the will but he signed the will on being satisfied that the signature was of the testator, not in the presence of the testator — Other attesting witness not examined — There is no proper proof of attestation. AIR 1965 Ker 32 (33) = 1964 Ker L T 676.

(33) Where the attesting witness who has been produced is a lawyer who is in no way related to the person proving the will, mere non-production of other attesting witnesses would not be enough to raise any suspicion against the will. 1957 All L Jour 667 (668).

(34) Where it is found that the attesting witnesses or some of them prove hostile, the Probate Court is not powerless and may pronounce in favour of the validity of the will from the circumstances of the case taken as a whole. ILR (1949) 1 Cal 471 (475, 476) (DB).

(35) Although the Act requires that a will has to be attested by two witnesses, S. 68 of the Evidence Act permits the execution of the will to be proved by only one attesting witness being called. If that witness can prove the execution of the will the law dispenses with the evidence of the other attesting witness. But if that attesting witness cannot prove the execution of the will, then his evidence has to be supplemented by the other attesting witness being called to prove the execution. AIR 1949 Bom 266 (268) (DB) ** (1965) 2 Ker L R 283 (287) ** 1957 M P L J 139 (142) (DB).

(36) Section 71 of the Evidence Act has no application when one attesting witness has failed to prove the execution of the will and other attesting witnesses are available who could prove the execution if they were called. AIR 1949 Bom 266 (269) (DB).

(37) Under S. 71, Evidence Act if the attesting witness denies or does not recollect the execution of the will, then its execution may be proved by other evidence. If the execution is to be proved by other evidence, then the proof of execution must satisfy the requirement of S. 63 of the Succession Act. (1965) 2 Mys L J 112 (115).

(38) The question whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of the provisions of Ss. 67 and 68 of the Evidence Act and Ss. 59 and 63 of the Succession Act. AIR 1959 S C 443 (451) = 1959 Supp 1 S C R 426.

(39) Merely because its terms appear to be reasonable, a document purporting to be a will cannot, without due proof of its execution, operate as a valid will. The law is that in order to be effective it should be the last will of a free and capable testator. AIR 1959 Andh-Pra 360 (362) (DB) ** AIR 1949 Bom 266 (270) (DB).

(40) The infirmity due to the want of proper attestation of the will under S. 63 (c) can be removed by obtaining probate of the will. AIR 1957 S C 875 (876) = 1958 S C R 548.

(41) If a will does not show attestation memo but there is signature of the testator at the foot and the subscription of two witnesses, then in the absence or death of the witnesses the first and the main presumption is that the testator signed in the joint presence of the witnesses and that they subscribed in his presence. If in the presence of witnesses who were all present in the assembly the testator signed the will

Section 63—Note 11 (contd.)
and the circumstances show that the witnesses must have put their signatures in that assembly, the presumption arises that the will was duly executed. (1909) 10 Cal L J 499 (501) (DB).

(42) It cannot be presumed from the mere signatures of two persons appearing at the foot of the endorsement of registration of a will that they had appended their signatures to the document as attesting witnesses or can be construed to have done so in their capacity as attesting witnesses. Section 68, Evidence Act, should be complied with in order that those two persons might be treated as attesting witnesses. AIR 1955 S C 346 (351) ** (1968) 34 Cut L T 874 (883).

(43) The affixing of the signature of the attesting witnesses in the presence of the testator is the ordinary mode of attesting a document and is the mode by which attestation is defined in S. 3 of the Transfer of Property Act. If therefore, under S. 90 of the Evidence Act, the presumption of due execution of a will is drawn, it necessarily amounts to a finding that the attesting witness signed in the presence of the testator. AIR 1947 Pat 449 (451) (DB).

(44) Where the Registrar not only asked a witness the formal question as to identity of the testator but caused the will to be read out a second time in his presence and only after the testator once again affirmed and acknowledged the execution of the will in the presence of the witness that the witness signed there was sufficient compliance as to the attestation. (1970) 72 Punj L R 30 (33) (Delhi).

(45) In cases of wills the presumption is that the attesting witnesses signed after the testator had signed. The presumption is based on the maxim omnia praesumuntur rite esse acta. AIR 1953 Cal 462 (464)=ILR (1955) 1 Cal 94 (DB).

(46) If a will appears on the face of it to have been executed and attested in accordance with the requirements of the Succession Act, then the maxim Omnia praesumuntur rite esse acta applies unless it is clearly proved by the attesting witnesses that the will was not in fact duly executed. A will cannot be invalidated merely because the attesting witnesses have chosen to give incorrect version of the facts and false evidence. AIR 1955 N U C (Punj) 4952 ** (1958) 1 W L R 462 (463).

(47) Where on the face of it the attestation is not in accordance with law, the maxim omnia praesumuntur rite esse acta does not apply. AIR 1955 NUC (Punj) 1618.

(48) One of two witnesses attesting will alive but not examined—Surviving witness not shown to be incapable of giving evidence — Attestation of will cannot be held proved. ILR (1964) Cut 27.

(c) Burden of proof.

(48-A) The onus lies upon propounder. In discharging that burden he must not only prove that the will was properly executed and attested but also that the instrument so propounded is the last will of a free and capable testator. Generally, of course, this onus is discharged by proof of capacity and the fact of execution from which the knowledge of and assent to the contents of the instrument are assumed. AIR 1953 Nag 316 (320)=ILR (1953) Nag 144 (DB) ** AIR 1969 Andh Pra 360 (362) ** 1959 Ker L T 1310 (1311) (DB) ** AIR 1956 Pat 377 (379) (DB) ** (1955) Madh B L J (HCR) 428 (431) (DB)**(1948) 53 Mys H C R 80 (84) (DB) ** AIR 1955 N U C (Assam) 2304 ** (1965) 2 Mad L J 387.

[See also I L R (1971) 2 Punj 246 (250) ** AIR 1962 Andh Pra 178 (DB).]

(49) The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine. AIR 1964 SC 529 (531, 534, 537).

(50) The onus of proving that the will is genuine and was duly executed lies on the sole beneficiary under the will. AIR 1965 Mad 519 (523)=78 Mad L W 198.

(51) Burden of proving due execution of the will always lies on the party pronounding it; he must satisfy the conscience of the Court that the testator at the time he executed the will was of sound and disposing state of mind. The burden is discharged by the fact of execution from which knowledge and assent of its contents by testator will be assumed. (1969) 1 S C W R 819 (822) = 1969 SCD 729.

(52) Onus is on propounder to prove that it is a will of a free and capable testator and if there are suspicious circumstances surrounding its execution and attestation the propounder has to remove them to the satisfaction of the court. The burden is still greater when the propounder gets a benefit. AIR 1951 Orissa 236 (237) = 17 Cut L T 38 (DB) ** 1970 Pat L J R 342 (351, 352) (DB) ** AIR 1969 Assam 118 (119, 120) ** 1968 Ker L J 123 (146 to 149) (DB) ** (1965) 2 Mad L J 259 (261, 262).

[See also 1973 W L N 71 (Raj) ** AIR 1966 Andh Pra 354 (356).]

(53) It is for the propounder to prove the will and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by the law is sufficient to discharge the onus. If there are suspicious circumstances and the propounder succeeds in removing them to the satisfaction of the court, the court would give effect to the will even if the will might be unnatural in the sense, it has cut off wholly or in part near relations. AIR 1972 SC 2492 (2494)=(1972) 2 S C W R 715.

(54) Where the execution of will is surrounded by suspicious circumstances, propounder has to remove suspicion and to prove affirmatively that testator knew and approved of its contents. (1969) 1 S C W R 819 (822)=1969 SCD 729 ** 1968 Ker L J 123 (147).

(55) Where the genuineness of a will is challenged, its propounder must prove to the conviction of court that it is a real, voluntary and conscious act of testator — Bald fact of registration is insufficient to dispel suspicious circumstances in a case. 1966 Ker L T 355 (357, 358).

[See also 1964 Ker L J 222 (223).]

(56) Where a will is prepared and executed under circumstances which excite the suspicion of the Court, it is for those who propound the will to remove such suspicion and to prove affirmatively that the testator knew and approved of the contents of the document. AIR

Section 63 – Note 11 (contd.)
1955 N U C (Assam) 2304 *r (1967) 12 Law Rep 92 (97, 98).

(57) Testator not making proper provision for his wife and sister depending on him — Propounder getting sole benefit under the will subject to maintenance of testator's wife and sister — Propounder taking part in execution of will — Signature of testator not appearing to be his usual signature — Testator in habit of signing blank papers - Signature of testator not in same ink and not with same pen with which body of will was written —Held propounder was required to satisfactorily explain suspicious circumstances before he could get letters of administration. AIR 1962 S C 567 (569, 571, 574)=(1962) 3 S C R 195=(1962) 1 Cri L J 507.

(58) Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the will might be unnatural and might cut off, wholly or in part near relations. A I R 1964 S C 529 (531, 534, 537). (AIR 1958 Cal 264. Reversed.) ** AIR 1969 Assam 118 (119, 120).

(59) The objector must prove, not merely the fact that there was opportunity to propounder to exercise influence over the testator but that such influence was in fact exercised on the particular occasion when testator executed will and that it was the result of such influence. The onus lies heavily on objector. ILR (1952) 2 Cal 56 (65) (DB).

(60) The caveators alleging fraud in registration, must prove the same. However, even where there is no such plea, but the circumstances give rise to doubts it is for the propounder to satisfy the conscience of the Court that the will is genuine. (1970) 74 Cal W N 1041 (1050) (DB).

(d) Evidence.

(61) When the testator is shown to have had a sound and disposing mind, the mere fact that the propounders have been negligent — and grossly negligent — in not complying with S. 63 and proving the will as they ought to, should not deter Court from calling for necessary evidence, in order to satisfy itself and its conscience whether in fact the will was duly executed or not. AIR 1949 Bom 266 (270, 271) (DB).

(62) Where out of three only one attesting witness is available, the other two being dead, the fact that he may turn hostile does not excuse party producing document from duty of calling him. AIR 1932 Mad 148 (150).

(63) The circumstance that the registry is not in the Book appropriate for the registration of a will is not one that would invalidate the document. AIR 1954 Trav-Co 197 (197).

(64) The production of a certified copy of a will more than thirty years old from Registration Office cannot be considered to be sufficient to justify the presumption of due execution of the original will under the provision of S. 90 of the Evidence Act. AIR 1957 Punj 146 (148)= ILR (1957) Punj 418.

(65) An endorsement under S. 60 of the Registration Act is admissible for the purpose of proving that the executant admitted the execution of the will that was produced before him. AIR 1957 Punj 146 (148)=ILR (1957) Punj 418.

(66) Negative evidence about execution and attestation need not be acted upon when other circumstances and evidence prove execution and attestation. AIR 1953 Nag 316 (326)=ILR (1953) Nag 144 (DB).

(67) Positive evidence of execution and attestation should be strong and cogent evidence which will satisfy the conscience of Court that the will does represent the last will and testament of the testator. AIR 1953 Nag 316 (323)= ILR (1953) Nag 144 (DB).

(68) It is a dangerous method to find in favour of a will or against it by a mere comparison of the signatures of the testator with other signatures of his and especially so when the dissimilarity relied upon is not that of a general character but merely of particular letters. AIR 1956 Mad 566 (569).

(69) Advocate filing caveat on behalf of testator's widow whereunder execution and genuineness of will was seriously challenged, admitting due execution of will and refraining from examining sole attesting witness — Grant of probate after comparing disputed signatures with admitted signature of testator but without ascertaining the circumstances which led to the admission of the advocate and without affording full opportunity to contest grant of probate and to cross-examine the attesting witness held had resulted in miscarriage of justice. AIR 1972 S C 1471 (1475)=(1972) 2 S C J 517.

(70) Will executed by dying person —Signature of testator not uncharacteristic of his admitted signature — Direct evidence of three surviving attestors that they saw testator executing the will — The fact that signature was in shaky handwriting held did not raise suspicion as to its genuineness. AIR 1962 Andh Pra 178 (183) (DB).

(71) As it is impossible that a testator can be called either to deny his signature or to explain the circumstances in which the will was executed, it is essential that trustworthy and effective evidence should be given to establish compliance with the necessary forms of law. AIR 1956 Mad 569 (570).

(72) It is legitimate to take into consideration the disposition which the deceased has made, the circumstances in which he was at the time when he made the will, and who were the people whom he would be expected to provide for. AIR 1955 N U C (Bom) 5317.

(73) Even where there are suspicious circumstances and the propounder succeeds in removing them, the Court will probate though the will might be unnatural and might cut off wholly or in part near relations. (1970) 74 Cal W N 1041 (1050) (DB).

(74) The recital in a solemn document like a will is very important and sufficient weight should be attached to it, and particularly when in respect of a matter which third parties cannot know and which was within the special means of knowledge of the testator, the only possible evidence is the recital in the will. (1948) 53 Mys H C R 80 (93) (DB).

(75) To establish a will, no higher standard of proof is required than what is necessary according to the statute law prevailing in India. (1948) 53 Mys H C R 80 (94) (DB).

64. Incorporation of papers by reference. — If a testator, in a will or codicil duly attested, refers to any other document then actually written* as expressing any part of his intentions, such document shall be deemed to form a part of the will or codicil in which it is referred to.†

[1865—S. 51.]

[*] This would probably be construed as including 'printed,' 'engraved,' 'lithographed,' 'typed' etc.

[†] This section applies to the wills of Hindus etc. — See S. 57 and Sch. III.

Section 63 — Note 11 (contd.)

(76) When the propounder is also the beneficiary, the Court has to scrutinise evidence with care, so as to satisfy its own conscience that the document does represent to be a true will of testator. (1961) 63 Pun L R 193 (205).

(77) In the case of will, there is no presumption against its genuineness; nor is there any presumption in favour of it. The standard of proof is what is required by S. 3, Evidence Act. (1948) 53 Mys H C R 80 (96) (DB).

(78) The registration of a will is an important circumstance which may prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document was a will and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. Registration may take place without the executant really knowing what he was registering. AIR 1962 S C 567 (Pr 23) = 1962 (1) Cri L J 507=(1962) 3 S C R 195=(1962) 1 S C J 725 ** (1966) 7 Guj L R 421 (428).

(79) There is nothing in law which requires the registration of a will. To draw any inference against genuineness of the will on the ground of its non-registration is wholly unwarranted. AIR 1954 S C 280 (281) ** 1971 Sim L J 70 (76) (HP) ** (1967) 12 Law Rep 92 (97).

[See also AIR 1969 Assam 118 (120) ** (1966) 2 Andh W R 134 (136, 138) (DB).]

(80) If a will is registered, it may, prove its genuineness, but mere registration is not sufficient to dispel all suspicions where suspicion exists without submitting the evidence of registration to close examination. If the evidence as to registration reveals that the registration was made in a perfunctory manner, the fact that the will was registered would not be of much value. (1970) 74 Cal W N 1041 (1049) (DB).

(81) Registration and admission of execution by testator before Registrar — Such evidence proves execution and disposing mind of testator —Registration dispels doubt as to genuineness. (1964) 66 Pun L R 1170 (1174).

(82) Ordinarily when the evidence adduced in support of a will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder AIR 1959 S C 443 (451)=1956 Supp 1 S C R 426** 1959 Ker L T 1310 (1311) (DB).

(83) Where there is proof of the testator's signatures and the attestors' signatures and none of the attestors is available there is presumption that the will had been duly executed in terms required by section 63. (1966) 2 Andh W R 134 (136, 138).

(84) The factum of compliance with the provisions of S. 63 should not be confused with the proof of such factum. AIR 1956 Punj 145 (146)= ILR (1956) Punj 157.

(85) A probate whether granted in common form or in solemn form is an event in rem. The practice of the probate Court recognises two ways of proving a will. One is proof in common form and the other is proof in solemn form. The legal proof in either case must be there and is the same and not different. (1955) 59 Cal W N 580 (590, 591).

(86) Cogent and reliable proof of valid execution of the will by the testator cannot be outweighed by mere circumstantial improbabilities. But there must be positive and reliable testimony in proof of validity of execution. 1959 Jab L J 673 (678) (DB).

(87) The evidence (oral and documentary) along with the surrounding circumstances has to be examined collectively — Before rejecting evidence on ground of discrepancies Court must satisfy itself that the discrepancies cannot be explained on account of defective memory, failing power of observation, A I R 1972 Cal 210 (217).

(88) All surviving attestors examined — Non-examination of scribe is of very little consequence. AIR 1962 Andh Pra 178 (184) (DB).

(89) Execution and attestation challenged — Non-examination of all attesting witnesses does not necessarily disprove execution. (1970) 74 Cal W N 1041 (1047) (DB).

(90) Propounder taking benefit under will examining only one of attestors to will as required under S. 68 and not examining other witnesses—Held propounder was under duty to examine all available witnesses and to produce best available evidence in support of execution of will —Non-production of such available evidence resulted in presuming that evidence was unfavourable to him under S. 114. (1966) 2 An W R 191 (194).

(91) No evidence that attestors and executant signed the will in each other's presence—Definite evidence of scribe that when he signed the will executant was not present and that he had not seen executant sign the will — No presumption can be drawn that formalities regarding execution of will have been properly complied with. 1971 Ker L R 324 (328) (DB).

Section 64 — Note 1

(1) A will was executed but not registered within one month as reguired by S. 13, Oudh Estates Act. Subsequently an addendum was made to it which referred to the will and explained it. The latter was duly executed, attested and registered. It was held that the former will, by virtue of S. 51, (Now S. 64) formed part of the later deed and was legally enforceable. (1902) 25 All 121 (126) = 30 Ind App 54 (PC).

CHAPTER IV

OF PRIVILEGED WILLS

65. Privileged wills.* — Any soldier being employed in an expedition or engaged in actual warfare, †[or an airman so employed or engaged,] or any mariner‡ being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in section 66. Such wills are called privileged wills.

Illustrations

(i) A, a medical officer attached to a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(ii) A is at sea in a merchant ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(iii) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare and as such can make a privileged will.

(iv) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged will.

(v) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(vi) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

[1865.S. 52.]

[*] This part would now apply to Hindus, Mohamadans etc. As to Hindus (including Jains, Sikhs, Buddhists, Lingayats, Brahmos Arya and Prarthana Samajists, in fact everyone who is born or brought up as such), see S. 30 of the Hindu Succession Act (1956), S. 30.

[†] Inserted by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I.

[‡] This is a general name for the Navy of a Nation. It would include a surgeon, purser, engineer, or any seaman. This should also cover Merchant Marine. For statute law as to Merchant Marine or Shipping, see The Merchant Shipping Act, 1954.

Section 64 — Note 1 *(contd.)*

(2) Where a deed poll of the same date is referred to in the will but not for the purpose of making or so as to make its contents a part of the will it does not come within this section. (1905) 29 Bom 530 (564)=32 Ind App 142 (PC).

(3) The testator of a will made three specific bequests and gave the residue of his estate to his son and appointed executors in the will. This will was written on three sides of a sheet of paper and the signature and attestation were at the bottom of the third side and the fourth side contained a schedule of the testator's landed property and particulars of some personal property; it was signed by him but the signature was unattested. It was held that as witnesses who were present at and attested the will had no recollection of seeing the schedule and could not give any explanation in regard to it, the document could not be looked into. (1878) 3 App Cas 404 (414).

Section 65 — Note 1

(1) A soldier under training cannot be said to be, in the absence of any other evidence, employed in an expedition, or engaged in actual warfare within S. 65. AIR 1946 Oudh 73 (74).

(2) Where an apprentice under the age of 21, and in the employment of a steamship company while ashore in England on leave executed a will and again within the next week returned to the ship which sailed away, the executant was at the material time a seaman at sea within the meaning of S. 11 of the Wills Act, 1837 (C 26) (as explained by S. 1 of the Wills (Soldiers and Sailors) Act, 1918) the will having been executed while in contemplation of sailing a fresh voyage. (1951) 1 All E R 841 (851).

(3) The deceased was a chief officer employed by the Anglo Saxon Petroleum Co. Ltd., in their marine department. On January 11, 1946, he went on furlough in England until April, 16, 1946. He was then awaiting re appointment to another ship. On April 25, 1946 the deceased received intructions from his employers to proceed to Sunderland to join a ship on April 30. On April 27, while at the sister's house he made a nuncupative will. Held, that the deceased made the will in contemplation of sailing that particular voyage, and therefore he was a seaman at sea, within the meaning of S. 11 of the English Wills Act, 1837 when he made the will; and the will was valid. (1952) 1 All E R 852 (853).

(4) The deceased entered the Royal Air Force in February, 1942. In October 1942, he was sent overseas to Canada for training in operational duties on service as an airman. On March, 1943, while on this service, the deceased wrote out a will, and signed it but did not get it attested. On August 11, 1943, the deceased, who had become a pilot instructor, died from injuries received as the result of an aircraft accident. Held, that the words "actual military service" in S. 11 of the Wills Act (English) 1837 meant "active military service". The deceased was at the time when he made the will, in "actual military service" and therefore, the document should be admitted to probate as a valid will. (1948) 2 All E R 908 (911).

66. Mode of making, and rules for executing, privileged wills.—(1) Privileged wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged wills shall be governed by the following rules:—

(a) The will may be written wholly by the testator,* with his own hand. In such case it need not be signed or attested.

(b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(c) If the instrument porporting to be a will is written wholly, or in part by another person and is not signed by the testator, it shall be deemed to be his will if it is shown thal it was written by the testator's directions or that he recognised it as his will.

(d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(e) If the soldier, †[airman] or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.

(f) If the soldier, †[airman] or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) The soldier, †[airman] or mariner may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged will.

[1865-S. 53.]

[*] This would be a Holograp will of Scottish law.

[†] Inserted by the Repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I.

CHAPTER V

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS

67. Effect of gift to attesting witness. — A will shall not be deemed to be insufficiently attested by reason of any benefit thereby given either by way of bequest

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Section 65 — Note 1 *(contd.)*

(5) A testator who was 19 years of age and on leave in England from the British Army of Rhine executed a will in May, 1954, which was prepared on the advice of a solicitor and properly executed according to S. 9 of the Wills, Act (Eng), 1837, In May, 1954, the British forces were in military occupation of certain areas in Germany by virtue of the unconditional surrender of 1945. The status and position of the forces in occupation were that of an army in occupation of a foreign country by force of arms. Hald, that despite the lapse of almost nine years since the unconditional surrender, the service of the testator was directly concerned with a war which had been in progress and that the testator was in 'actual military service' in May, 1954 within the meaning of the Wills Act (Eng.) 1837, and that the will was a valid will by virtue of S. 1 of the Wills (Soldiers and Sailors) Act (Eng.) 1918. (1958) 1 W L R 457 (461).

Section 66 — Note 1

(1) An entry in a kindred roll, prepared by the Military authorities on the basis of the information furnished by the soldier cannot be considered as a will. AIR 1957 Andh Pra 336 (337)=ILR (1957) Andh Pra 540.

(2) Where the language of the oral statement of the deceased soldier on the eve of embarkation clearly stated what he wanted to be done with his property after his death, it is immaterial for it to operate as a will, whether he knew it could have any testamentary effect; and it is equally immaterial whether other people thought or whether he thought, that he could only do that by referring to a document which was then in existence. 1949-2 All E R 659 (661).

Section 67 — Note 1

(1) The reason for the prohibition contained in this section is not the incompetency to give evidence on the ground of interest which has

or by way of appointment to any person attesting it, or to his or her wife or husband, but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

Explanation. — A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

[1865—S. 54.]

68. Witness not disqualified by interest or by being executor. — No person, by reason of interest in, or of his being an executor of, a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.*

[1865—S. 55.]

[*] This section applies to the wills of Hindus etc.—See S. 57 and Sch. III.

69. Revocation of will by testator's marriage.* — Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

Explanation. — Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

[1865—S. 56]

[*] This section does not apply to the wills of Hindus etc.—See Sch. III.

Section 67 — Note 1 (contd.)

ceased both in England and India to be a disqualification but it is the suspicion or rather the chance of possible collusion which is favoured by the prospect of benefit. (1879) 4 Mad 244 (246).

(2) By S. 19, Oudh Estates Act, 1869, this section has been made applicable to all wills and codicils made by any Taluqdar in Oudh. AIR 1925 Oudh 465 (465, 466) (DB).

(3) Section 15, Wills Act (1 Vic. C. 26) annuls a legacy given to the attesting witness beneficially but does not annul a legacy which is given to somebody else and the witness is only a trustee for the purpose of directing the disposition of that legacy. (1868) 3 Eq 69 (74).

(4) A bequest to an attesting witness is void whether or not the attestation of the witness is indispenable to the validity of the will. (1882) 4 Mad 244 (245, 246).

(5) Father making will and calling sons to sign it as token of consent to avoid quarrels among themselves — Sons, so signing, do not sign as attesting witnesses. A I R 1927 P C 248 (249)=52 Ind App 1=2 Luck 640. (A I R 1925 Oudh 465, Affirmed.) **AIR 1928 Oudh 67 (76).

[See also A I R 1929 Oudh 494 (507) = 5 Luck 305 (DB). (Acceptance of the will shown by the signature on it does not involve voidness of bequest in favour of the signing legatee.)]

(6) A presumption that the witnesses signed as attesting witnesses created by the position of the signatures can be rebutted by parol evidence as to what actually occurred at the time of putting the signatures. A I R 1927 P C 248 (250)=52 Ind App 1=2 Luck 640.

(7) Attesting witness taking no benefit under a devise at the time of attesting it but subsequently marrying a devisee under it — Marriage held, did not destroy the validity of the devise. (1881) 6 Q B D 311 (312).

(8) Bequest to son of an attesting witness independently and not as person claiming under the attesting witness is not void. Section 67, has no application. AIR 1937 Lah 292 (294).

(9) A beneficiary in law is not incompetent to attest a will which gives him benefit. That is not a suspicious circumstance by itself which can justify a revocation of a probate. (1955) 59 Cal W N 580 (586).

Section 69 — Note 1

(1) The rule of the English law which makes a woman's will null and void on her marriage is part of the matrimonial law and not of the testamentary law. (1900) 1900 P D 211 (240).

(2) An ante-nuptial will executed by a woman having a foreign domicil where marriage does not revoke a will is not revoked by the acquisition of an English domicil by the woman and her husband subsequent to their marriage. (1904) 1904 P D 269 (272, 273).

(3) A will is revoked by a second marriage even in cases where a second marriage is lawful, e. g., in the case of Jews. (1876) 1 Cal 148 (149).

(4) Decree absolute for divorce was obtained by A and B in India on 27-11-1879. B went to England and there married with C on 3-2-1880 —C executed a will on 6-2-1880—C and B again went through a second form of marriage on 2-4-1881 — Held that as the marriage celebrated on 3-2-1880 was within 6 months of the date of divorce decree it was invalid as it offended the Indian Divorce Act IV [4] of 1869 and the will was revoked by the subsequent marriage celebrated on 2-4-1881. (1890) 15 P D 152 (156).

(5) Where in a will made by a father there was, first of all a settlement on each daughter of the income of her share during her life, with remainder to her children or the other grandchildren of the testator as the lady should

70. Revocation of unprivileged will or codicil.* — No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil,† or by some writing declaring an intention‡ to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying§ the same by the testator*† or by some person in his presence and by his direction with the intention of revoking the same.*‡

Section 69 — Note 1 (contd.)
appoint and that for the moment as each share was so settled, the trusts in default of appointment were not declared but there was a clause that 'I have all my residuary estate that may not hereby or hereunder be effectually disposed of'. One of the the daughters made a will in respect of her share whereby she created a trust in favour of her son. Subsequently she married again: Held that as the property, in default of appointment, could not have passed to the daughter's heirs etc., the will made by the daughter was not revoked by her second marriage. (1921) 2 Ch 1 (5).

(6) Frenchwoman residing in England and making a will—Subsequent to the making of the will she marrying a French who came to England from France to escape from punishment in his country — Both husband and wife carrying a laundry business in England and investing sums in it — The husband returning to France after nearly twenty years: Held that the Frenchman acquired an English domicil and the ante nuptial will was revoked by the French woman's marriage as the English law governed the matrimonial property. 1900 P D 211 (240).

(7) A christian testator domiciled in England died in Calcutta in 1947. He made his will in 1942 and married in 1943. It was held that the law applicable was the English law and that by virtue of S. 18 of the English Wills Act (1837) the will stood revoked by the testator's subsequent marriage and the will not being made in contemplation of marriage was not saved by S. 177 of the Law of Property Act (1925). I L R (1950) 2 Cal 494 (496).

(8) The will provided " . . . . . I give, devise and bequeath unto my fiancee Maida Edith Beck . . . . . " Held,that when the testator used the words he was expressing a contemplation of marriage to that named lady and the will was not revoked by his subsequent marriage to her. (1953) 1 All E R 928 (930).

(9) The right of a testator to grant a power of appointment to a person designated in the will authorising to regulate the final devolution of the estate at the termination of the interest previously created has been recognised by the Courts of this land. AIR 1959 Andh Pra 448 (451) (DB).

Section 70 — Synopsis

1. Scope.
2. Another will or codicil—Revocation by.
3. "Some writing."
4. Tearing of will—Effect.
5. "Otherwise destroying."
6. Destruction of will by third party.
7. Intention to revoke.
8. Loss of will—Presumption arising from.
9. Burden of proving revocation.

1. Scope. — (1) The revocation of an unprivileged will can only be by one or the other of the modes specified in S. 70. There cannot be any revocation by necessary implication. AIR 1951 Bom 339 (341).

(2) There is no law in Cochin relating to Wills and providing for the revocation of a deposited will. Nor is there any provision for revocation of unprivileged wills as in S. 70 of the Indian Succession Act. Therefore no particular formality is necessary under that law for revoking a will except possibly the rule of prudence that when an inference in favour of revocation is asked to be drawn from the conduct of the testator, the conduct must be such as to show that his mind was directed to the question whether the will was to remain in force or not and his conduct proceeded on the footing that the will was no longer to be in force. Alienation of part of property covered by a will is not indicative of revocation thereof. A I R 1960 Ker 1 (7, 8)=ILR (1959) Ker 665 (FB).

(3) Clause in joint will providing that if testators do not agree to revoke will its provisions shall be final — Effect of clause is to take away testator's inherent power of revocation. (1964) I Ker L R 4 (6).

(4) Joint mutual will becomes irrevocable on the death of one of the testators if the survivor has received benefits under the mutual will. AIR 1964 Mad 291 (294)=(1964) 2 Mad L J 545 (DB).

2. Another will or codicil—Revocation by.— (1) The mere fact of making a subsequent testamentary paper does not effect a total revocation of a prior one unless the later document expressly or impliedly revokes the former one. On the other hand, the execution of a second will which expressly revokes—or is entirely inconsistent with a former one revokes the first even though the second will is not forthcoming at the death of the testator, and its contents are proved by oral evidence. (1952) 1 All E R 1030 (1031, 1032).

(2) Where the revocation of an existing will is sought to be proved by parol evidence alone that another will has been executed such evidence ought to be stringent and conclusive. (1952) 1 All E R 1030 (1033). ((1854) 14 E R 247, Foll.)

(3) Where it is sought to prove the revocation of a will by oral evidence only, such evidence must be stringent and definite, free from vagueness and uncertainty. A I R 1956 Orissa 151 (154)=ILR (1955) Cut 125 (DB).

(4) The will of a Hindu may be revoked by parol. But the oral revocation of a written and registered will—that revocation amounting in itself to a nuncupative will—needs to be proved by the most unexceptionable evidence. There must be very cogent evidence to prove the animus revocandi which is so very essential for the purpose of revocation. AIR 1952 Nag 250 (251). (AIR 1927 Mad 383, Foll.)

(5) The doctrine of dependent relative revocation is only a branch of the ordinary law of construing wills. When there is a codicil it is always necessary to see to what extent it re-

Illustrations

(i) A has made an unprivileged will. Afterwards, A makes another unprivileged will which purports to revoke the first. This is a revocation.

(ii) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is a revocation.

[1865—S. 57.]

[*] This section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

[†] Mere fact of making a subsequent testamentary paper would not work a total revocation of a prior one, unless the latter expressly or in effect revokes the earlier or the two are incapable of standing together.

[‡] The intention contemplated here is the present; words declaring a future intention to revoke e.g. by a codicil, are insufficient.

[§] These words exclude cancelling or incomplete erasure or obliteration. Modes of destruction must be ejusdem generis, as cutting, throwing into water or the like.

[*†] Destruction of one of two duplicate wills by the testator himself would amount to destruction of both.

[*‡] The Act does not lay down what is to happen when the testator with a view to setting up another one, destroys the will and the second will is void or declared as such. It seems the earlier will will not be considered as revoked.

Section 70 — Note 2 (contd.)

vokes the will, and it is elementary that no codicil revokes a will further than is required for the purposes of the codicil. That does not mean that all revocation is dependent on the efficacy of the codicil, because the latter document may show that an out and out revocation of the will was intended in any event, and where that is shown nothing will revive the will which has been revoked. (1956) 2 All E R 353 (355).

(6) Held, on facts that the doctrine of dependent relative revocation was attracted because the testator had revoked the prior will under a mistaken belief that he had made a subsequent valid will which offended the provisions of Section 118, Succession Act. AIR 1962 Ker 48 (49) (Pr 12) = 1961 Ker L T 500 (DB).

(7) Execution of wills on different dates— Subsequent instrument not professing to be a codicil but is adequate to the disposition of entire property — Subsequent instrument can be held to supplant prior instrument. AIR 1918 Mad 759 (762, 763) (FB).

(8) Will and codicil made — Subsequent revocation of will—Codicil cannot be deemed an integral component of the will and the mere fact of the revocation of the will cannot operate to revoke the codicil. AIR 1922 Cal 182 (184) (DB) * (1873) 16 Eq 19 (23) * (1870) 2 P & D 78 (80).

(9) Where a testator authorised by his will his wife to adopt a son after his death and he made a second will which was silent as to the power: Held, that the power to adopt contained in the earlier will was unaffected. AIR 1915 P C 37 (39)=43 Ind App 20=39 Mad 107.

(10) An alternative inconsistent subsequent disposition which is not valid or effectual in itself, does not revoke an earlier disposition of the same property. AIR 1916 P C 37 (39)=43 Ind App 20.

(11) A Hindu testator executed three testamentary documents. By the first he divided his whole property equally among his six sons. By the second document he established a common cutchery, the managers of which were to look after their estates even after the sons have attained majority and to distribute profits among the sons according to their shares. By a third document the sons were deprived from getting personal possession and restrictions as to alienation were imposed upon them: Held that the restrictions contained in the second and third document were invalid and inoperative as they barred the sons' right to claim possession and therefore, the first will remained unaffected by the subsequent wills. (1888) 15 Cal 409 (421) =15 Ind App 37 (PC).

(12) Earlier will together with two codicils revoked by later will— Subsequent execution of third codicil to earlier will by which testatrix revived that earlier will together with one codicil — Revocation of third codicil — Revival of earlier will and codicil held not affected by revocation of third codicil. AIR 1951 Bom 339 (344).

(13) Testator by his later will disposing of his entire estate — Later will must be regarded having revoked his earlier will. AIR 1960 Madh Pra 255 (256) (DB).

(14) In order to have the effect of revocation under Section 70 the existence and contents of a subsequent will must be proved by evidence of a clear and satisfactory kind. But where the scribe of the subsequent will was not examined as regards its execution and the witness who was said to be the attesting witness did not say whether he saw the testator executing the will or not, it could not be held that the subsequent will was proved and as such it did not revoke the earlier will. AIR 1962 Assam 106 (107, 108) =ILR (1962) 14 Assam 276 (DB).

3. "Some writing".—(1) There can be no clearer evidence of revocation of will than a statement made by the testator himself in a registered document that he has cancelled the will, whether the document itself operates as cancellation or not — Section 70 does not apply to this revocation and the formalities required thereby also have no application. AIR 1946 Oudh 223 (224) (DB).

(2) A will can only be revoked by a document executed in the same manner as a will or by tearing or destroying the will. A letter written by the testator intimating that he was revoking the will cannot be regarded as a valid revocation when it is not attested as required by law and

Section 70—Note 3 (contd.)
there was no evidence that the will was destroyed. AIR 1955 Nag 126 (136) = ILR (1955) Nag 321 (DB).

4. Tearing of will — Effect. — (1) Writing of word "cancelled" on will with date and signature by testator accompanied with tearing of will partially revokes will completely. A I R 1916 Cal 400 (403) (SB).

(2) Where a will professed to be executed under seal and was published and attested as a sealed instrument, when the seal wae torn off it ceased to be the instrument which the testator professed to execute and to publish to the attesting witnesses and through them to the world. (1858) 3 H & N 341 (506).

5. "Otherwise destroying."—(1) There must be an act of destruction and mere symbolical destruction is not sufficient. The destruction must be with an intention to revoke and by some method ejusdem generis with those described in that proviso in the section. Both under the English and Indian Statute Law, cancellation appears to have ceased to be one of the ordinary modes of revocation. AIR 1928 Bom 194 (197) = 52 Bom 653.

(2) Where a will is destroyed animo revocandi, it amounts in law to a revocation. This is a question of fact which has to be proved by the objector. AIR 1956 Orissa 151 (155) = ILR (1955) Cut 125 (DB).

(3) Codicil written at foot of will — Testator revoking will striking off his signature to the will but keeping the codicil intact — Proof of testator's wish to die intestate — Testator's intention, held was to revoke both will and codicil. (1883) 8 P D 169 (170).

6. Destruction of will by third party,— (1) Verbal authority to third party to destroy will is sufficient to constitute revocation. (1878) 3 Cal 626 (643) = 4 Ind App 228 (PC).

7. Intention to revoke. — (1) The evidence as to revocation must satisfy the pre-requisites of intention to revoke followed by an act in pursuance of the intention of the testator. ILR (1954) 1 Cal 126 (132) (DB).

(2) A defacement, obliteration or destruction without the animo revocandi, is not sufficient. Neither is the animo revocandi, sufficient unless some act of obliteration or destruction is done. AIR 1916 Cal 400 (403) (SB).

(3) It is open to a person who has made a will at any time to alter or to revoke it. But if he has died leaving a registered will and has not taken any tangible steps to revoke such a will, it is not enough to allege that the testator had at one time entertained the intention of doing so. AIR 1955 SC 566 (573, 574) = (1955) 2 SCR 252. (AIR 1953 Cal 103, Affirmed) ** AIR 1953 Cal 103 (106) (DB).)

(4) In the absence of formal revocation as by a deed, the mere proof of the intention of the testator to revoke is not sufficient unless it is accompanied by an act. As for instance, a will destroyed by a person of unsound mind has not the effect of revoking a will. ILR (1954) 1 Cal 126 (132) (DB).

(5) The statement by the testator in a subsequent registered document that he has actually cancelled the will is sufficient to express an intention by the testator to revoke the will. AIR 1946 Oudh 223 (225) (DB).

(6) Though no particular formality is necessary for showing an intention to revoke a will, for an inference in favour of revocation the conduct of the testator, must show that his mind was directed to the question whether the will was to remain in force or not. AIR 1937 Mad 26 (26) (DB).

(7) Making various gifts during life time of part of the property included in the will does not amount to revocation of the will. AIR 1928 Lah 934 (935).

(8) Where a testator after execution of a will enters into compromise with other members of his family as a result of which he is allotted properties different from those that were allotted to him at the time of execution of the will, this has not the effect of revocation of the will. Since the will takes effect only after the death of the testator, it will operate only in respect of properties that the testator died possessed of. AIR 1957 Andh Pra 93 (96) (DB).

(9) A will should not be deemed to have been cancelled on the ground that it was not reaffirmed in other documents. A will will be effective till it is revoked either expressly or by necessary implication, such as by the execution of another. It does not need to be kept alive by making references to it in other documents. AIR 1957 Andh Pra 93 (96) (DB).

8. Loss of will—Presumption arising from. (1) When a will is shown to have been in the custody of the testator, but is not found after his death, a presumption arises that the will had been destroyed by the testator for the purpose of revoking it. (1836) 1 Moo P C 299 (302)**(1876) 1 P D 154 (217)**(1900) 1900 App Cas 604 (610) ** (1865-69) 1 P & D 281 (284, 285).

[See also ILR (1954) 1 Cal 126 (128) (DB.)]

(2) On proof of fact that the will had not been found after the death of the testator, it is not necessary for those, who allege that there has been a revocation, to prove, as a matter of fact, that there was a revocation or that the will had either been lost or destroyed. (1858) 164 E R 626 (629).

[See also ILR (1954) 1 Cal 126 (128) (DB).]

(3) The onus of rebutting the presumption of revocation lies on party propounding the will. (1836) 1 Moo P C 299 (302).

(4) Such a presumption may be rebutted by the propounder of the will if he can show that the will was in existence after the death of the testator, or even from surrounding circumstances, such as, on proof of declaration of the testator, after the will and before his death, of unchanged affection in favour of the devisees, or of an intention to stick to the devises originally made. 1909 P 305 (307) * * (1906) 22 T L R 741.) (Upheld on appeal in (1907) 23 TLE 747.) * * (1970) 74 Cal W N 1041 (DB).

[See also ILR (1954) 1 Cal 126 (128) (DB).]

(5) The presumption of the English law that if a will traced to the testator's possession before his death but not forthcoming after his death, had been destroyed by him animo revocandi would be not so strong in India as in England, in view of the habits and conditions of the people in India and must be applied with considerable caution. ILR (1954) 1 Cal 126 (129) (DB) ** AIR 1915 PC 111 (112)=1915 Pun Re No. 93**AIR 1950 East Punj 358 (360)** AIR 1963 Punjab 208 (212) = 1LR (1962) 2 Punj 915 (DB).

71. Effect of obliteration, interlineation or alteration in unprivileged will.* — No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible,† unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will :

Provided that the will, as so altered, shall be deemed to be duly executed if the signature‡ of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.§

[1865—S. 58.]

[*] This section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

[†] Would oral evidence to show what the obliterated writing was be admissible in evidence? Also see S. 91 of the Evidence Act, 1872.

[‡] Does this mean that wills of illiterate persons who have only put their mark on the will are excluded from the purview of this section?

[§] Will here, as in S. 63 supra, must be taken to include "codicil".

Section 70 — Note 8 (contd.)

[See however AIR 1914 Cal 365 (367) (DB). (Presumption applied)**(1904) 31 Cal 885 (891) (DB). ((1876) 1 P & D 154, Foll.)]

(6) In cases where a will is traced to the possession of the testator and is not forthcoming after his death, the question whether the presumption, that the will must be taken to have been destroyed by the testator with the intention of revoking the same, should conclude the matter or not, has to be determined in the light of the fact of each case. AIR 1953 Cal 657 (660) =ILR (1955) 1 Cal 109 (DB)**AIR 1928 Cal 307 (309)=55 Cal 482 (DB). (AIR 1914 Cal 365 and 31 Cal 885, Not foll.)**((1903) 13 Mad L Jour 135 (136) (DB)**69 Pun L R (D) 297 = AIR 1967 Delhi 128 (132) (DB).

[See however (1904) 31 Cal 885 (891) (DB). (1876) 1 P & D 154, Foll.)]

(7) In a case where though there is some evidence to show that the key was always with the testator and it would appear that one N was managing the property of the deceased at the time and was a man of his confidence and that the key was possibly with him, and there is no evidence whatsoever of a search having been made immediately after the death of the testator or even at any other time, it would not be safe to conclude from this that the will was in the actual physical possession of the testator at all sometime before his death. No presumption can be drawn in such case that the will had been revoked because the original is not forthcoming. AIR 1959 Bom 287 (288)=ILR (1959) Bom 210.

(8) When a document like a registered will was in the custody of the testator at the time of his death and is not forthcoming after the testator's death, presumption may well arise that it has been mislaid. In this country a presumption of revocation of a will cannot be drawn merely from the fact of its disappearance. AIR 1956 Orissa 151 (155)=ILR (1955) Cut 125 (DB).

(9) No general rule can be laid down as to the nature of the evidence which would be required to rebut the presumption. In some cases even slight evidence may be sufficient to revoke the presumption. (1950) 54 Cal W N (2 D R) 99 (103) (DB).

(10) Where the essential condition of the rule of English law in (1836) 1 Moo P C 299, "if a will traced to the possession of the deceased and last seen but is not forthcoming on his death" has not been established, the presumption of law that it is destroyed by the testator himself does not apply. AIR 1946 Pat 24 (26)=24 Pat 395 (DB).

(11) Onus lies on the person alleging revocation — Will in possession of persons interested to deny, not produced — No presumption that it was revoked can be raised. AIR 1963 Punj 208 (212) = ILR (1962) 2 Punj 915 (DB).

9. Burden of proving revocation.—(1) When the due execution of will is proved in the manner required by law, it lies upon the objector to plead and prove revocation. If revocation is not pleaded, then the Court will not presume revocation from the fact that the will is not forthcoming. AIR 1914 Cal 365 (368)**(1870) 2 P & D 172 (176).

(2) The burden of proving that a will has been revoked rests on the objector. That burden may be discharged by direct evidence or by an inference to be drawn from certain facts which the objector may succeed in establishing. In dealing with the question of revocation, the Court may also resort to a presumption which has been raised in similar cases by the Courts in England and applied with caution by the Courts in this country. AIR 1953 Cal 657 (659) = ILR (1955) 1 Cal 109 (DB).

(3) The burden of proving revocation of a will is on the party who sets up the plea and in order that the loss of a will may raise a presumption of revocation, it must be proved that the will was not in existence at the time of the testator's death. AIR 1955 Trav-Co 177 (179) = ILR (1955) Trav-Co 704 (DB).

Section 71 — Note 1

(1) Section 71 applies to wills and codicils. 1934 Mad W N 357 (360) (DB).

(2) The rule of the English law that a will with false attestations is void for all purposes when applied to Hindus does not go beyond this that the alteration in a will renders it invalid as the foundation of a suit by the party who has altered it or in whose custody it was when altered but that it does not render the

72. Revocation of privileged will or codicil. — A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation. — In order to the revocation of a privileged will or codicil, by an act accompanied by such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

[1865—S. 59.]

73. Revival of unprivileged will.*—(1) No unprivileged will or codicil nor any part thereof, which has been revoked in any manner, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.†

(2) When any will or codicil, which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown by the will or codicil.‡

[1865—S. 60.]

[*] This section applies to the wills of Hindus etc.—See Sch. III infra.

[†] The destruction of the revoking instrument is, therefore, not enough.

[‡] These words exclude oral evidence to show how a revival was intended to operate where it may be doubtful whether the whole or part of a will, which was first partly and then wholly revoked.

Section 71—Note 1 (contd.)
instrument void for all purposes and the altered instrument may be used as proof of some right or title created by, or resulting from, its having been executed. (1884) 7 Mad 302 (303) (DB).

(3) This section applies only to alterations made after the execution of the will. Where the alterations made are unattested and the intention of the will is clear even without them and is not affected by them will as it originally stood without the unattested alterations will be admitted to probate. (1913) 19 Ind Cas 692 (693) (DB) (Lah)**(1844-46) 4 Moo P C 419 (453) = 13 E R 365 ** AIR 1921 Cal 677 (686) = 47 Cal 1043 (DB)**(1892) 16 Bom 652 (655, 656) (DB). (Do.)

(4) T executing a will in 1894 — In 1901 T handing over a copy of that will with various pencil alterations to W for custody — T by codicil confirming the copy-will as altered by him in pencil — Section 71 held did not apply as the alterations were made before the execution of the will. (1902) 29 Cal 311 (313).

(5) Blank spaces in the body of a will do not themselves make the will invalid. (1892) 16 Bom 652 (655) (DB).

(6) Where the Court has every reason to feel certain what the intention of the testator was on the day of execution of the will and the Court has no satisfactory information that the subsequent pencil alterations which the testator, in the wanderings of illness may have projected were anything more than transient and deliberative, the Court should pronounce for the will without the pencil alterations. (1828) 1 Hagg 490 (498) = 162 E R 655.

(7) If there be any blemish in the deed by erasure or interlineation, the deed ought to be proved though it were above thirty years old, by the witnesses, if living, and if they be dead, by proving the hand of the witnesses, or at least one of them, and also the hand of the party, to encounter the presumption arising from the blemish of the deed and this ought more especially to be done, if the deed impute a fraud. (1844-46) 4 Moo P C 419 (451) = 13 E R 365.

Section 72 — Note 1

(1) Where will is not a privileged will, S. 72 cannot apply to it. AIR 1939 Oudh 213 (221) (DB).

Section 73 — Note 1

(1) The effect of confirming a will by codicil is to bring the will down to the date of the codicil and to effect the same disposition of testator's property as would have been effected if the testator had at the date of the codicil made a new will containing the same dispositions as in the original will but with the alterations introduced by the codicil. AIR 1931 P C 307 (308)**(1904) 1 Ch 726 (734).

(2) A codicil duly made to pass a testator's real estate amounts to a republication of the will so as to make the will bear date with the codicil and to affect all the lands the testator had at the time of the making of the codicil. (1893) 1 Ch 101 (110, 115).

(3) Where a will is presumed to have been destroyed animo revocandi, it is open to the plaintiff to bring before the Court evidence to rebut it and to show what the intention of the testator was in destroying the will. If the Court is satisfied that the destruction was conditional on another will being made, then the doctrine of dependent relative revocation applies, and if

CHAPTER VI

OF THE CONSTRUCTION OF WILLS*

74. **Wording of will.**—It is not necessary that any technical words or terms of art be used in a will, but only that the wording be such that the intentionst of the testator can be known therefrom.

[1865—S. 61.]

[*] Ss. 74 to 90 of this chapter apply to the wills of Hindus etc. — See S. 57 and Sch. III infra.

[†] The intention must appear either by express words or by plain implication.

Ssction 73 — Note 1 (contd.)
this later instrument turns out to be invalid, the first will is not revoked by that destruction because the testator did not have any animus revocandi, Evidence of the physical destruction of the will is not necessary. (1951) 2 All E R 997 (1001).

:Section 74 — Synopsis

1. Construction of will—General principles.
2. Technical words—Interpretation of.
3. Construction of wills by Hindus

1. Construction of will — General principles. — (1) Alhough the cardinal rule in the construction of wills is to give effect to the intention of the testator, the duty of the Court is to discover not what the testator meant but what is the meaning of his words. (1910) 11 Cal L J 461 (474) (DB) ** (1881) 18 Ch D 531 (542)* (1966) 2 Mad L J 7 (9),

(2) Technical words or words of known legal import must have their legal effect even though the testator uses inconsistent words, unless those inconsistent words, are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. (1897) 24 Cal 834 (846) = 24 Ind App 76 (PC).

(3) The popular meaning and popular connotation of a word used by the testator in a will, as normally understood by ordinary testators is to be adopted. AIR 1969 Cal 71 (75) = 72 Cal W N 891 (DB).

(4) The ordinary rule of construction is that the same expression should be construed in the same sense wherever it appears in the same document unless of course there is something repugnant in the context. (1959) 1 Mad L J 335 (345),

(5) Where the language of a will is clear and consistent, it shall receive its literal construction unless there is something in the will itself to suggest departure from it (1895) 18 Mad 347 (358) = 22 Ind App 119 (PC) ** (1970) 1 Andh L T 261 (266) (DB).

(6) Where there has been a devise or bequest of all a man's property, the generality of the disposition is not cut down unless the intention that it should be so cut down is clear. (1908) 31 Mad 283 (305) (DB).

(7) In the case of gift, a benignant construction is to be used and if the real meaning of the document can be reasonably ascertained from the language used, though that language be ungrammatical or untechnical or mistaken as to name or description or in any other manner incorrect provided it sufficiently indicates what was meant, the meaning shall be enforced to the extent and in the form which the law allows. (1872) 18 Suth W R 359 (364) = Ind App (Sup Vol) 47 (PC).

(8) A testator cannot, by the use of mere negative words unaccompanied by any effective disposition of property, alter the course of the law. (1880) 4 Bom 537 (543) (DB).

(9) Where a testator, in one part of his will, has recited that he had given a legacy to a certain person but it does not appear so, Court takes the recital as conclusive evidence of an intention to give by the will and fastening upon it, gives to the erroneous recital the effect of an actual gift. AIR 1935 Cal 788 (791) (DB).

(10) Testator, after giving his wife a life estate in his property authorised her to draw upon "current deposit accounts" for her maintenance and for maintenance of the property as "she may require". The words "as she may require" were held to mean as may be necessary and not as she may think fit. (1908) 31 Mad 283 (307) (DB).

(11) Rule of construction by analogy is a dangerous one to follow in construing wills differently worded and executed in different surroundings. AIR 1953 S C 304 (306) = 1953 S C R 848.

(12) It is not proper and indeed dangerous to construe one will according to the construction placed on the other wills. Same word in different contexts may have different meaning and significance. AIR 1957 Punj 146 (149) = ILR (1957) Punj 418 (DB) ** (1963) 2 Mys L J 437 (442) (DB). (The terms and tenor of the will concerned should in the final analysis be the guiding factors.) ** AIR 1959 Pat 585 (587) = 1959 B L J R 505 ** A I R 1952 Nag 327 (328, 329)=1953 Nag L J 22 (DB).

(13) To interpret one will by reference to the language used in another will is hardly a proper course to adopt. Each document has to be interpreted on its own terms read in the context in which they occur and the circumstances in which the document came into existence. AIR 1947 Oudh 45 (57)=21 Luck 463 (DB).

[See also (1959) 1 M L J 335 (341) (DB).]

(14) On a question of true interpretation of a will, decisions on the construction of other wills are useful only for the limited purpose, in so far as they lay down the principles of law which have to be observed in the construction of wills. Courts should not form any pre-conceived notions about the intention of the testator, based upon some decision apparently containing similar language and then enquire, how far the will in question resembles the will or wills referred to in the judicial decisions. AIR 1969 Mad 217 (218) = (1969) 1 Mad L J 108. ** (1969) 82 Mad L W 102 (104, 111, 112).

(15) On the question of giving effect to a will, two questions are involved. The first is whe-

Section 74 — Note 1 (contd.)
ther all the terms could be so construed as to harmonise with one another; and the second is whether, thus construed, all the terms could legally be given effect to. AIR 1958 Mad 431 (432).

(16) To gather intention of executant language of entire deed should be considered. That interpretation should be adopted which gives effect, if possible, to all the parts, and does not reject any of them. If there arises a difficulty in giving effect to every part of the document it should be solved by adopting the construction which bespeaks a reasonable and probable intention. AIR 1947 Oudh 45 (57, 58) = 21 Luck 463 (DB).

[See also AIR 1952 Mad 784 (785) (Pr 4) = (1952) 1 Mad L J 169.]

(17) The Court should, to the extent legally permissible give effect to the intention of the testator. The intention has to be gathered by reading the will as a whole. As far as possible effect should be given to every clause in the will as each clause therein is as important as the other. A construction which renders any clause in the will superfluous should be avoided, if possible. All parts of the will should be construed in relation to each other. 1969 S C D 884 (887).

(18) Where words are used in the latter part of the will which have no application to the preceding direction, such words should not be allowed to detract from the force and effect of the earlier part. Defects, even if any, in expression should not be allowed to prevent the carrying out of testators intention. AIR 1959 Pat 585 (589)=1959 B L J R 505.

(19) Where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers by imposing restraint on alienation would be repelled on the ground of repugnancy. But where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the will, it is a material circumstance to be relied upon for displacing the presumption of absolute ownership. 1959 Andh L T 67 (75). (Reversed on facts on construction of the terms of the will in AIR 1961 Andh Pra 390.)

(20) Where the testator intended to bequeath his properties with absolute rights to his wife it could not be said that he conferred only a limited or life estate on his widow simply because she was at the same time authorised to take a boy in adoption. (1970) 1 Andh L T 261 (267) (DB).

(21) The construction of a will must depend upon the plain grammatical meaning of the document which is sought to be construed, and if there is an inherent lacuna in the document, the Court cannot fill it. But if without stretching the language it is possible to give a construction which may fulfil its purpose, then such a construction should be accepted. AIR 1955 Assam 81 (84) (DB).

(22) While interpreting a will the intention of the testator is the governing principle and the intention can be gathered only by the words used by him. The words in the will should be taken in their ordinary and grammatical sense unless an intention to use them in another sense can be collected and the clear and unambiguous words are not to be controlled by any general expression of intention and must be given effect to even though thereby the intention of the testator fails and capricious or harsh and unreasonable consequences follow. (1966) 8 Law Rep 322 (325, 326) (Mys).

(23) In construing the language and arriving at the intention of a particular testator, decisions on construction of other wills are of little assistance. The only guidance to be obtained from them is that what must be sought in every instance is the dominant intention of testator. Proper approach must be to form an opinion apart from decided cases and not to begin by considering how far will in question resembles other wills upon which decisions have been given. AIR 1973 Guj 146=(1973) 14 Guj L R 45 (51) (FB).

(24) The following are some of the rules to be observed in construing a will: (1) The document should be read as a whole and effect should be given to all the provisions which are legal and not in conflict with any principle of law; (2) if property is given to a person absolutely then the absolute bequest exhausts the power of the testator and any provision made in the will as to any subsequent devolution is void and ineffective; (3) if property has been given absolutely to donee any subsequent attempt to alter line of succession is void and ineffective in law; and (4) it is always dangerous to construe words of one will by the construction of more or less similar words in a different will. The primary duty of the court is to ascertain the intention of the testator from the language used. To find out this intention courts are entitled and even bound, to bear in mind other matters such as surrounding circumstances, the position of the testator, his family relationships and the probable use of the word by him in a particular sense. AIR 1955 N U C (All) 2774.

(25) Where the judge did not deal with all relevant provisions of the document conclusively establishing that the document was testamentary but dealt only with a single clause relating to revocability relied upon in order to determine character of document, it was held to be an error apparent on face of record justifying review. AIR 1972 Mad 309 (313) = (1972) 1 Mad L J 297.

(26) The words used in a will must be construed in the light of the facts existing at the time when the will was made and when the testator was living and must be read in context with other provisions contained in the will. AIR 1948 Cal 19 (23) = ILR (1947) 1 Cal 117 (DB).

(27) Golden rule in interpreting will is to give effect to testator's intention as ascertained from language which he has used. Duty of Court is to construe the language which testator has in fact employed giving due weight to all words and rejecting none to which a meaning can reasonably be assigned. The Court is entitled to "put itself into testator's armchair". AIR 1959 Pat 585 (588) = 1959 B L J R 505.

(28) It is the duty of the courts to ascertain the dominant intention of the testator from the words used in the document and surrounding circumstances and give effect to it to the extent and in the form the law allows. The interpretation given should be such as would give effect to all parts if possible and does not reject any of them and if there is any difficulty in giving effect to any part in the document it can only

Section 74 — Note 1 (contd.)
be solved by adopting a construction which brings out reasonable and probable intention and is not in any way inconsistent with the testator's views. AIR 1956 Hyd 153 (157) = ILR (1956) Hyd 107 (DB) ** AIR 1969 Ker 207 (209, 210) = 1968 Ker L J 749.

[See also AIR 1970 Pat 144 (149) = ILR 48 Pat 683 (DB) ** AIR 1969 Mad 217 (218) = (1969) 1 Mad L J 108 ** (1969) 82 Mad L W 102 (104, 111, 112) ** AIR 1966 Pat 40 (41) = 1965 B L J R 410 (DB) ** AIR 1962 Pat 149 (154, 155). (Courts must consider surrounding circumstances the position of testator, his family relationship the probability that be would use words in a particular sense and many other things. The court is entitled to put itself in testator's armchair.)]

(29) Where a will is attacked as inofficious on the ground that the heir-at-law has been deprived of the bulk of the properties, the explanation given by the testator in the will, if true and sufficient is entitled to great weight. The recital in a solemn document like a will is very important and sufficient weight should be attached to it, and particularly when in respect of a matter which third parties cannot know and which was within the special means of knowledge of the testator, the only possible evidence is the recital in the will. (1950) 28 Mys L J 124 (135) (DB).

(30) The duty of the Court in interpreting a will is to find out the intention of the testator from the language used therein by making an attempt to reconcile all the provisions of the will. A gift over is regarded as a circumstance indicative of the intention of the testator to cut down the absolute estate created in favour of a beneficiary. AIR 1969 Ker 246 (247, 250) = 1969 Ker L R 98.

(31) Where there is absolute gift of property followed by a gift over of property after death of donee, absolute gift prevails. To construe the latter clause as cutting down prior absolute estate into a simple life estate with no powers of alienation would be doing clear violence to express language of will under guise of adopting a rule of harmonious construction of reconciling all the clauses together there is no justification for adopting a construction which in effect destroys operative force of clear words contained in first clause. (1966) 2 Mad L J 7 (12).

(32) Court cannot say that testamentary disposition should be made only in particular way and not in any other and it is not concern of court to examine reasonableness or fairness of dispositions. (1966) 6 Law Rep 422 (439) (DB) (Mys).

(33) In the case of a will disposing different portions of a house what is to be found out is the intention of the executant and not what would be conducive to the health of the parties. Ordinarily the roof goes along with the room, being treated as a part of it. But where the executant thought it advisable to divide the house between his sons and in allotting shares gave different floors to different persons and not portions on the ground floor with all constructions on the top of it, open roofs were not held as joint property. AIR 1954 Ajmer 63 (2) (64).

(34) In the case of a will reasonable, natural, and proper in its terms, canons of construction which demand a rigorous scrutiny of documents which are unnatural, unreasonable or tinged with impropriety should not be applied. AIR 1952 Punj 147 (150, 151) (DB).

(34-A) Under residuary bequest, the legatee would be entitled to all property belonging to testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect. If a testator deals with a particular fund and disposes of part of it and then deals with the residue of that fund, that does not constitute a true residue. What he disposes of is really a specific portion of that fund which can be arrived at by a mere arithmetical calculation. There is nothing to prevent there being two residuary clauses in a will. AIR 1947 Bom 122 (127, 128) = ILR (1947) Bom 1.

(35) Where a will is executed by a person without the requisite knowledge of law or skill in drafting, then in construing it Court should not adopt standards which would be appropriate to a will drafted by an expert draftsman. AIR 1958 Mad 431 (432).

(36) If there are any two clauses in a will conflicting with each other Court must try and reconcile them with each other. The Court has to see first of all what was the dominant intention of testator. All parts of will are to be construed with reference to each other so as to form one consistent whole, but where it is not possible to reconcile all the parts the latter must prevail. AIR 1946 Bom 134 (135).

(37) Clear and unambiguous dispositive words should be given their full effect and should not be controlled or qualified by general expression of intention. The Court is not concerned with what the parties intended but with the meaning of the words used. AIR 1958 Andh Pra 447 (448) (DB).

(38) Where there is no total lack of necessary words of disposition but the words of vesting are not clearly written in a deed, the deed will not fail because in case of marginal doubt validation is the time of law. AIR 1971 Ker 270 (271).

(39) A joint will though unusual is not unknown to law. A will is mutual when two testators confer upon each other reciprocal benefits as by either of them constituting the other his legatee. But where the legatees are distinct from the testators there can be no question of a mutual will. AIR 1959 SC 71 (73, 74, 75) = 1959 Supp 1 S C R 1.

(40) Joint will made by husband and wife reciting that certain property was obtained by wife on gift from her family and, therefore, her sons were entitled to it—Alienation of property by wife — Suit by son and half-son of wife for declaration that alienation was not binding on plaintiffs — Property alienated held belonged to wife absolutely and therefore, alienation could not be impeached by plaintiffs. (1964) 1 Ker L R 4 (8, 9).

(41) The question as to whether a disposition is to the person intended in a will as a persona designata or by reason of his filling a particular legal status which turns out to be invalid must ultimately depend on facts of a case and the terms of the particular document containing the disposition. The question in all such cases is whether the gift of the property by the testator to a person who is referred to as having been adopted is one which is dependent on whether all the requisites of a valid adoption have been

Section 74 — Note 1 (contd.)
complied with or whether it is to designated person notwithstanding that it was desired and expected that the requisites for a valid adoption were complied with. The distinction between what is description only and what is the reason or motive of a gift or bequest though fine, must be drawn from a consideration of the language and the surrounding circumstances. AIR 1957 S C 815 (823)=1958 S C R 214.

(42) Question whether disposition of properties to the plaintiff is as a persona designata or by reason of his fulfilling particular legal status, e.g., an adopted son—Question is one of intention of testator—Held, on reading various clauses of will, there was no gift to plaintiff and there was only a direction to defendant to adopt plaintiff as son of testator and intention of testator was that plaintiff should take as adopted son and, therefore, gift made to plaintiff was conditional on his being adopted. AIR 1967 SC 207 (208) = (1966) 3 S C R 446. (1959 Andh L T 803, Reversed.)

(43) An instrument styled as "Dastavj God Nashini" recited that the executant had adopted the claimant as his adopted son seating him on his lap, that since that date he would be called his adopted son, that as such he would perform executant's last rites. It also recited that after the death of executant claimant would become owner of all properties of executant. In the end it was mentioned that the document of "God Nashini" was being registered. Held that the document was a deed of adoption and not a will. Recital about succession to executant's properties, read in conjunction with earlier recitals and not independent of them, did not make the instrument a will. AIR 1972 Madh Pra 193 (195, 197) = 1972 Jab L J 739 (DB).

(44) The intention of testator should be gathered from the language of will and the surrounding circumstance. The question that falls to be decided in each case is whether the designation of a legatee as adopted son is discriptive of the person to take under the will, or whether adoption is the reason or the motive or the condition of the gift. Though decided cases supply a guide and a correct perspective for construing a will, the decision necessarily turns upon the peculiar wording of a particular will and the circumstances surrounding the execution of the will. (1958) 2 Andh W R 50 (54, 55) (DB).

(45) Document can be partly testamentary and partly immediately effective as settlement— Necessary element to read a will in such a document — Relative provisions must be revocable — Intention has to be gathered from document if words are express and clear — In case of ambiguity, surrounding circumstances, during execution may be looked into. AIR 1968 Mad 61 (62, 65) = (1967) 1 Mad L J 440.

(46) It would be an act of injustice to attribute to a dead man who has created an endowment to take effect on his death, an intention to create a fictitious endowment merely because the person in whom he has reposed confidence has betrayed his confidence. AIR 1950 Assam 154 (156, 157) (DB).

(47) A bequest in favour of "dependants" of person is incapable of taking effect. (1947) 1 All E R 458 (458).

(48) In a case in which a will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator, it is for those who propound the will to remove that suspicion. If the propounder takes a prominent part in the execution of the will which confers substantial benefit on him that itself is a suspicious circumstances attending the execution of the will. AIR 1968 S C 1332 (1334, 1335)=(1968) 3 S C R 473. * * AIR 1968 All 425 (427).

(49) The fact that testator had not bequeathed any property to one of his children does not make the will invalid if its execution is satisfactorily proved. AIR 1971 S C 2236 (2240) = 1971 S C D 296.

(50) A case of personal covenant which is a matter of mutual agreement does not at all arise in a will under which the testator bequeaths his properties in a particular manner which is to take effect after his death. To say, therefore, that there was no personal covenant to pay in the will under consideration is to misconceive the very nature and scope of the document. AIR 1959 Cal 268 (270) = 63 Cal W N 227 (DB).

(51) Unnatural provision in will — It is relevant factor in considering validity or execution of will or in determining testamentary capacity of testator where undue influence is alleged or due execution of will is challenged. AIR 1970 Cal 85 (87).

(52) Will providing for management of trust — Testator's intention to prescribe rule of lineal primogeniture for trusteeship—Succession could be traced only to last holder and not to document. (1965) 1 Mad L J 146 (DB).

(53) Where a will recited that the testatrix would do certain things in her lifetime and that if she was not able to do them, her executors would do them after her death. Held, that the recital did not make the document a settlement. AIR 1951 Kutch 20 (22).

(54) Section 74 incorporates a rule as to construction of wills. It has no relevance to an application for removal of executor and for immediate delivery of legacies to the legatees under the will. (1967) 1 Mys L J 339 (340) (DB).

(55) Wherever a will comes into being in circumstances which raise the suspicion of the Court, it ought not to be pronounced for, so long as the suspicion remains. A rule as this is not confined only to cases in which a will comes into being at the instance of a person taking a benefit under it. (1969) 73 Cal W N 820.

2. Technical words — Interpretation of. — (1) A testator who writes his own will and is not a lawyer is not, in all cases, to be held to have rightly apprehended the meaning of technical words which he may have used on the occasion of making his will; but a testator who uses words which have an intelligible conventional meaning is not to be held as having used the words with any other meaning unless the context of the instrument shows that he intended to do so. 1894 App Cas 310 (313).

(2) Technical terms or words of known legal import should have their proper legal effect attributed to them although the testator uses inconsistent terms or gives repugnant and impossible directions. To deprive the technical words of their appropriate sense, there must be sufficient to satisfy a judicial mind that they were meant by the testator to be used in some other

Section 74 — Note 2 (contd.)
sense, and to show what that sense is. (1913) 1 Ch 552 (557).

(3) The words "enjoy with son, grandson and so on in succession" used in Hindu wills have acquired the force of technical words conveying a heritable and alienable estate. (1897) 24 Cal 834 (849)=24 Ind App 76 (PC).

(4) Testator bequeathed property to his wife by a will which provided "in trust and for her maintenance and support during her life" and appointed her his sole administratrix — Held, the testator intended that she should enjoy the income of the property for life but should not be entitled to deal with the corpus. (1908) 31 Mad 283 (304) (DB).

(5) Indenture deed settling income of property on some person for life and giving him power of appointment — On default of appointment, upon trust and for the use of said trustees absolutely to be expended and used by them for such charitable purposes as they may think fit—Held the deed did not confer an unfettered and unlimited interest on the persons designated as trustees. (1905) 29 Bom 375 (385) (DB).

(6) A bequest to a woman as 'Malik' imports a full proprietary right unless there is something in the context to qualify it. AIR 1954 All 715 (715, 716).

(7) The word "issue" in the expression "does not have an issue" is compatible with the view that both natural and adopted sons were contemplated. AIR 1958 Andh Pra 447 (449, 450) (DB).

(8) Word "santanera" ordinarily includes sons and daughters, but surrounding circumstances may give it restricted meaning to include sons only. ILR (1949) 2 Cal 67 (70, 71, 74).

(9) The testatrix married D who had previously married her sister and had a son J. The testatrix always regarded and spoke of J as her son. A daughter K was born to the testatrix but she never married. J married and had before the death of the testatrix two children N and M. By her will the testatrix provided: "I devise and bequeath all.....my real and personal estate.....unto the bank on trust for such of my grandchildren as shall be living at my death and attain the age of 21 years or previously marry and if more than one in equal shares absolutely." She had no lawful grandchildren living at her death or at any time during her life. Held that the testatrix had used the phrase "grandchildren" as meaning N and M. (1949) 2 All E R 551 (553, 554).

(10) A testator executed a will bequeathing his properties, with a direction that his wife should enjoy them for her life and after her life, the wife should pass on the property 'Dakhalu Parachavalasinadi' to their daughter with absolute rights. Held, the words 'Dakhalu Parachavalasinadi' only mean that the daughter should take possession after the wifes death, but not that there should be any overt act on the part of the wife, much less the execution of a registered instrument to confer those rights on the daughter. (1966) 2 Andh L T 54 (58).

(11) Will providing that testator's wife, C, should enjoy immovable properties and carry on her livelihood from income thereof, pay kist and debts of testator and purchase other lands if possible — No mention that C was entitled to alienate properties — After C's lifetime testators's grandchildren then alive where to take all properties absolutely — Will held conferred life-estate on C. AIR 1960 Mad 391 (391) (DB).

3. Construction of wills by Hindus —(1) The nature and extent of the testamentary disposition by Hindus is not governed by any analogy to the law of England. (1856)10 Moo Ind App 279 (308) (PC).

(2) In construing the will of a Hindu it is proper to take into consideration the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family and it may be assumed that a Hindu knows that as a general rule, at all events, women do not take absolute estates of inheritance which they are enabled to alienate. (1841) 2 Ind App 7 (14, 15) (PC).

(3) Where the will of a Hindu testator among other things provided "If both the daughters have issue they shall divide the properties equally. Those who have no issue shall enjoy the income for their lives and those who have issue shall enjoy the whole property." Held, that the words "have issue" did not mean those who "leave issue." Therefore one of the daughters who had a son born to her but who predeceased her, took her share absolutely and the share did not go over to her sister on her death. (1895) 18 Mad 347 (358)=22 Ind App 119 (PC).

(4) Will of a Hindu father — Gift to daughters and their respective sons and in the event of one of the daughters dying without leaving any male issue surviving, then the share of the deceased daughter is to go to the surviving daughter and her sons to the exclusion of female issues in both cases — The intention of the testator is to exclude daughters' daughters and the daughters take only a woman's estate. (1908) 35 Cal 895 (902)=35 Ind App 118 (PC).

(5) Where a Hindu, in a document of a testamentary character after stating that the property was ancestral recites the death of his son, his own wife and further states; "Only D. K. widow.....of my deceased son.....who too, excepting her two daughters.....has no other heirs, is my heir." And further he goes on to say "except D. K. none other is nor shall be my heir and malik," "Further more to the said D. K. too, her two daughters.....together with their children, are and shall be heir and Malik" Held, that the will should be construed as meaning that D. K. should take an estate subject to her daughters succeeding her. (1874-75) 2 Ind App 7 (15) (PC).

(6) Deed purporting to be a deed of permission to adopt — Deed registered in lifetime of its maker — Deed not containing any words of devise — Maker not having any intention to dispose of his estate by it — Deed held did not amount to will. (1860) 10 Moo Ind App 279 (309) (PC).

(7) One of the clauses of the will was as follows: "If I have no son at the time of my death I give, devise and bequeath to my wife a Hindu widow's life estate in all properties (not hereinafter otheswise disposed of) which belong to me now or shall belong to me at the time of my death of whatsoever kind and nature and wheresoever situated which life-estate shall be defeasible and divestible on the adoption of a son to me for which authority is being given to

Section 74 — Note 3 (contd.)
her hereinafter." Held, that the disposition in favour of R. was a widow's estate and not a mere life estate. AIR 1956 Pat 457 (465, 468) (DB).

(8) Testator bequeathing his entire properties to wife and after her death to his children by making allotments— Will held created only life-estate in favour of wife. AIR 1969 Ker 207 (209, 210)=1968 Ker L J 749.

(9) A will made by a Hindu in the Punjab ran as follows:—"I bequeath as under: I will remain the owner of the property so long as I remain alive. After my death all the three widows of my son shall be the owners and possessors like me in equal shares. But they shall not have any power to alienate property. They shall simply be entitled to the produce on payment of the revenue in equal shares..... When all the three widows of my son die daughter's sons of my son shall be the owners and possessors in equal shares of the aforesaid property generation after generation." It was held that only a life estate was conferred on the three widows. AIR 1957 Punj 146 (149) = ILR (1957) Punj 418 (DB).

(9A) A Hindu testator who had three Ranis *T*, *P* and *S* made a will, Under it *T* was to take village *A* and *P* village *B* for their lives without power of alienation. *S* was to get Rs. 250 from *P* and on the death of *P* to get possession of village *B* for life without power of alienation. After the death of all the Ranis the son of the testator's daughter *K* was to be owner of all the villages and in the absence of such a son, *K* was to be the owner of the entire estate. It was argued that though village A was bequeathed to the seniormost Rani *T* and *K's* son was to inherit it on the death of three Ranis no provision was made as to who was to have it in interval between the death of *T* and the death of youngest Rani *S* when *K's* son was to take it absolutely. There was therefore intestacy with regard to village *A*: Held that the dominant intention of the testator was that his entire property should be enjoyed by three Ranis so long as they lived. The directions as to division of the property and payment of Rs. 250 to *S* only laid down the manner of enjoyment of the property by them. AIR 1947 Oudh 45 (59)=21 Luck 463 (DB).

(10) A Hindu can confer by means of a will on his widow the same estate which she would get by inheritance namely Hindu widow's estate. The widow in such a case takes as a devisee and not as an heir. The widow cannot be held to have been given a full Hindu widow's estate under the will unless under its terms she is given the power of alienation for necessary purposes. AIR 1953 S C 304 (305, 306) = 1953 S C R 848.

(11) Bequest in favour of wife that she should enjoy income from property during her lifetime as owner — Property to go over to adopted son after death of wife—Wife held given only limited estate. AIR 1964 S C 234 (243) = (1964) 3 S C R 520.

(12) Where a Hindu bequeathed to his daughters one veli of nanja land and one veli of punja land in a certain Vattam number out of the properties possessed by him and remaining properties were bequeathed to his nephew—Held, that the right of selection of the particular land was with the legatee daughters; that what was classed at Thottam or garden lands would be described in the revenue records only as punja lands and in the absence of any express indication in the will to exclude the category of thottam lands or topes from the lands described as punja it must be held that whatever lands were not nanja should be treated as punja. AIR 1956 Mad 521 (522) (DB).

(13) Unless there is an intention expressed by the grantor to the contrary the sons taking the self-acquired property of their father under a will or gift by him take it as tenants-in common and not joint tenants. In case the grant is silent and no clear intention has been expressed the true intention of the grantor is to be gathered from the terms of the grant in accordance with the accepted canons and circumstances of each case. AIR 1959 Pat 116 (120, 121)=37 Pat 1477 (DB).

(14) Will in favour of B and K—Will reciting that both of them should enjoy property throughout their lifetime without powers of gift, transfer and sale and after their death children that might be born to them should enjoy the same with powers of gift, transfer and sale—Held that B and K took life estate and the children took the vested remainable per stirpes and not per capita — Joint tenancy which was unknown to Hindu Law could not be spelled out from the recitals. AIR 1968 S C 751 (753)=(1968) 2 SCR 395.

(15) Bequest to two sisters for life and after their death to their children — Death of one sister—Her share held to pass to her children and not to lapse by survivorship to surviving sister—Sister's children held to take per stirpes and not per capita. A I R 1964 Andh Pra 45 (47, 50)=(1963) 2 Andh W R 54 (DB).

(16) Will dividing property amongst sons and wife—Words employed clear and unambiguous importing absolute estate on wife—Will held conferred absolute estate on wife. AIR 1961 Andh Pra 390 (392, 393) = (1960) 2 Andh W R 378 (DB).

(17) Will creating life-estate in favour of testator's wife—After wife's death testator's grandchildren to take properties absolutely—No mention that they were to take per stirpes—They take per capita — Gift to a class bearing same degree of relationship to testator—Presumption is that they share gift equally between them unless testator makes any differentiation between them. AIR 1960 Mad 391 (391) (DB)* *(1963) 67 Cal W N 870 (875).

(18) It is now well settled that merely because a property is given to a Hindu woman, a limited interest is not to be inferred. It is always a question of construction. In most of the cases where life interest is said to be taken by a woman, there is always a gift over to some other person and in such case, it could very well be said that what was given to the first taker was only a life interest. (1969) 1 Mad L J 524 (527).

(19) Where the bequest under a will was in favour of wife bequeathing to her in unqualified language all moveable and immoveable properties and the provisions of the Will empowered the wife to collect the outstandings and discharge the debts payable by the testator and further directed to continue Testator's business to educate children to maintain the family and to apply the property for the well being of the members of the family such a will must be

75. Inquiries to determine questions as to object or subject of will. — For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court shall inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations

(i) A, by his will, bequeaths 1,000 rupees to his eldest son * or to his youngest grandchild or to his cousin, Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies,

(ii) A, by his will, leaves to B "my estate called Black Acre." If may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(iii) A, by his will, leaves to *B* "the estate which I purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C,

[1865—S. 62.]

[*] Would an adopted son be included? The section applies to the wills of Hindus, etc.—see Sch. III infra. Hindu Adoptions and Maintenance Act, 1956 not only permits widows to adopt a son in their own right but has conferred the right to adopt for themselves on bachelors and maidens as well.

Section 74 — Note 3 (contd.)

understood as incorporating a clear bequest to the wife burdened with obligation referred to in the will. (1966) 2 Mys L J 131 (133) (DB).

(20) Where all that the Hindu testator stated in his will was that if the legatee died without living a son the estate should devolve on the plaintiff, the legatee is not debarred from adopting a son according to Hindu Law. Once the estate went to the legatee absolutely under the will in the normal course it should devolve according to the personal law of the legatee. (1966) 8 Law Rep 625 (631) (DB) (Mys).

(21) Vested interest and contingent interest—Distinction—Will creating life interest in favour of testator's two wives M and L and widowed daughter-in-law R and after their death his daughters J and K were to enter into possession of entire property absolutely — Held, that the interest of two daughters vested in them on testator's death though possession was postponed till all life estate holders died—On J's death her half share passed on to her sons. AIR 1962 Pat 149 (152, 155).

(22) Subsequent conduct of testator — Not material — Failure to provide for lapse — Does not affect construction of will — While construing a will the Court is on the search for the intention of the testator on the date of execution of the Will and not at about the time of his death. (1963) 2 Mys L J 437 (444) (DB).

(23) The property of the testator not included in the will would after his death go to his nearest heir at the time of the will. AIR 1963 Pat 430 (436) (DB).

(24) Beneficiary great grandson or paternal uncle of testator — Execution in his favour alleged because he promised to perform the obsequies of testator — Testator leaving surviving him no issue excepting his daughter—Testator living separate from the beneficiary since long time — Testator not on inimical terms with his daughter or son-in-law, instead he was on amicable terms with his daughter - Testator during last part of life taking shelter in his daughter's house and ultimately breathing his last there — Year of execution changed in alleged will — Right hand margin of document also cut off — Held, that the will was not genuine one and was subsequently fabricated. AIR 1968 Orissa 228 (230) (DB).

(25) If reading the document as a whole it is clear that whatever remains, whether substantial or otherwise, after the charities are performed, it is not to form an accretion to the corpus but can be utilised and taken by the manager or the trustee, as his own the endowment will not be an outright dedication but a charge only is created in favour of the charity for the expenses or dhittam specified in the deed of endowment. (1970) 1 Mad L J 349 (352).

(26) Joint will made by husband and wife — Property bequeathed to plaintiff — Joint codicil imposing condition for payment of certain sum as from certain date to defendant failing which property to go to defendant — No payment made —Plaintiff held had no right to property. (1964) 1 Ker L R 4 (8).

(27) Absolute bequest — Bequest to be first met out of certain assets — In case of deficiency, other property made liable — There is no charge on assets. AIR 1960 Punj 231 (234) (DB).

Section 75 — Note 1

(1) In all cases it is the primary duty of Courts to ascertain from the language of the testator what were his intentions and in so doing they are entitled and bound to consider surrounding circumstances, the testator's position, his family relationships, the probability that he would use words in a particular sense and many other things including influences and aims arising from the race and religious opinion of the testator. But all this is solely as an aid to arriving at a right construction of the will—As soon as it is settled, the duty of the Court is to carry out the intentions as expressed and none other. (1914) 37 Mad 199 (221, 222) = 41 Ind App 51 (PC)**(1913) 24 Mad L J 418 (422) (DB).

(2) That the native testators should be ignorant of the legal phrases proper to express their intentions or of the legal steps necessary to carry them into effect is one of the most important "surrounding circumstances". (1914) 37 Mad 199 (222, 223) = 41 Ind App 51 (PC).

76. Misnomer or misdescription of object.*—(1) Where the words used in a will to designate or decribe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Section 75 — Note 1 (contd.)

(3) Courts should not enter into an enquiry regarding external circumstances to gather the intention of the testator when the language of the document is clear. AIR 1918 Mad 759 (763) (FB) * (1910) 12 Bom L R 863 (865) * (1867) 3 Ch App 420 (424).

[See also (1902) App Cas 1 (10, 11).

(4) It is not proper to admit extrinsic evidence of testator's intention in a case in which the difficulty created by the use of a particular expression can be solved by adopting a construction bespeaking a reasonable and probable intention and rejecting that which indicates an intention unreasonable, capricious and inconsistent with the testator's views as evidenced by his conduct and by the dispositions of will which are not open to controversy. (1888) 15 Cal 725 (749) = 15 Ind App 127 (PC). ((1858) 7 H L C 389, Foll.)

(5) Hindu testator had a son J by Mahomedan wife, J was brought up as a Hindu and married a Hindu lady from whom he had a son B. J also had four sons by his Mahomedan mistress. The testator's will provided "J, though illegitimate, he being my son it is incumbent on me to provide for him and his (aulad) issue and that certain amount should be paid to him and his (aulad) issue for generation after generation so long as the family of J and his (aulad) issue remain in existence": Held that the word "aulad" meant only legitimate children and that intention of testator was to treat J's marriage with Hindu lady as valid and the issue of that marriage as legitimate issue. (1914) 36 All 101 (122, 123) = 41 Ind App 1 (PC).

(6) Testator adopting B — Testator executing a document which provided "I place all my property in the possession of my wife to be enjoyed by her during her life time and to appropriate the profits therefrom but she is not to sell the property and after her death the estate is to devolve on B — B giving consent to the deed": Held, that it was a family settlement giving to the testator's wife an estate for life and not a widow's estate and to B a vested remainder on her death. (1876) 1 Cal 104 (104) = 2 Ind App 256 (PC).

(7) The testator directed that a certain pecuniary legacy be entrusted to one H to be disposed of by him in accordance with instructions given by testator to one of his trustees and that his share in a certain company be transferred to the person whose name will be disclosed by H. The intended beneficiary filed a suit praying that H might be ordered to disclose the trust: Held that a parol evidence was admissible to prove the trust. AIR 1915 Bom 10 (14) = 40 Bom 1.

(8) The testator wished that a samadhi should be built on the place at which he would be buried on his death and that the said samadhi should be called Bhagwan Sansthan but no idol of any deity was to be installed there. The objects on which the money was to be spent were stated to be 'yatra, punyatithi and building, etc.' but the building referred to was in connection with the Sansthan and the yatra and punyatithi referred to the testator himself: Held, that Bhagwan Sansthan was not a juristic person and as such it could not hold property. A bequest made thereto was accordingly void. AIR 1959 Bom 287 (289) = ILR (1959) Bom 210.

(9) Where although the legatee was described in the will to be the daughter of B, it was clear from evidence that the legatee was only six months old when her mother died and that she was taken to the custody of and brought up thereafter by her aunt, the testatrix and it was further clear that the testatrix and her husband B had no child and that they brought up the legatee as their daughter: Held, that the legatee though described as the daughter of B was intended to be the same girl who was adopted by him and his wife the testatrix. AIR 1961 Assam 129 (131).

(10) Bequest in favour of wife and adopted son — Held gift over in favour of son was by way of defeasance — On son predeceasing wife took absolute interest in property. (1963) Supp 2 S C R 834=AIR 1963 S C 1703 (1704 to 1708).

(11) (Per Newaskar and Pande, JJ.) — Where the will bequeathed to the legatee properties standing in the name of "Balkrishnadas Krishnadas" and the properties claimed stood in the name of "Balkrishnaji" "Krishnadasji" it was held that though both the names were fictitious, external evidence was admissible to show that the name in the will meant "Balkrishnaji Krishnadasji" and the legatee was entitled to claim the properties mentioned in the will (Per Krishnan, J.) — Since the difference in the two names was basic, the legatee could not claim the properties mentioned in the will. ILR (1962) Madh Pra 815.

(12) The rule of construction underlying S. 75 is that a Court has a right to ascertain all facts which were known to the testator at the time he made his will and thus to place itself in the testator's position. Evidence is therefore admissible to show that persons or property actually exist as described in the will. (1971) 1 Mad L J 127 (135).

Section 76 — Note 1

(1) The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances. (1885) 11 Cal 463 (484) = 12 Ind App 72 (PC).

(2) There is a maxim that names shall prevail against an error of demonstration. But it must first be shown that there was an error of demonstration and the rule does not apply till it is shown. But there is no presumption in favour of the name more than of the demonstration. (1860) 8 H L C 172 (179).

(3) Extrinsic evidence as to testator's intention is admissible when the description in the will is equally applicable to two or more persons

Illustrations

(i) A bequeaths a legacy to "Thomas, the second son of my brother John." The testator has an only brother named John, who has no son named Thomas, but has a second son whose name is William. William will have the legacy.

(ii) A bequeaths a legacy "to Thomas, the second son of my brother John." The testator has an only brother, named John, whose first son is named Thomas and whose second son is named William. Thomas will have the legacy.

(iii) The testator bequeaths his property "to A and B, the legitimate children of C" C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(iv) The testator gives his residuary estate to be divided among "my seven children" and, proceeding to enumerate them, mentions six names only. This omission will not prevent the seventh child from taking a share with the others.

(v) The testator, having six grandchildren, makes a bequest to "my six grandchildren" and proceeding to mention them by their Christian names, mentions one twice over omitting another altogether. The one whose name is not mentioned will take a share with the others.

(vi) The testator bequeaths "1,000 rupees to each of the three children of A". At the date of the will A has four children. Each of these four children will, if he survives the testator, receive a legacy of 1,000 rupees.

[1865—S. 63.]

['] This section applies to the wills of Hindus etc.— see Sch. III infra. For construction of this section see para. 5 of Sch. III.

77. When words may be supplied.*—Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Section 76 — Note 1 (contd.)

but imperfectly descriptive of each of them. (1916) 1 Ch 461 (465).

[See also (1908) 2 Ch 111 (116).]

(4) Bequest to B whom the testator referred to as "his wife" — Though marital tie between B and the testator was motive of bequest yet if it was not proved bequest can be treated as made to B as persona designata. AIR 1930 Lah 830 (832) (DB).

(5) T, by first will settling his property on his aurasa son K — Second and third will confirming his intention to give his property to his aurasa son K — K not a natural son of T— Held that there was gift by will to K and the gift was not vitiated by false description. (1899) 22 Mad 383 (391) = 26 Ind App 83 (PC).

(6) Bequest to wife for her life and then to L testator's "adopted son" — Wife predeceasing testator — Adoption not proved : Held as there was nothing in the will to show that adoption was motive or reason for the gift the bequest was valid and L took as persona designata. (1909) 31 All 5 (6) (DB) * (1901) 24 Mad 214 (218) = 27 Ind App 162 (PC).

(7) Testatrix adopting H, a daughter of N — Subsequently testatrix giving her property to H by will — H, a near relation of testatrix — In will sometimes the phrase 'adopted daughter' occurred and sometimes it did not occur in relation to the name H — Adoption invalid — On construction held that H was not to take the property under the will as being the adopted daughter but H was the adopted daughter and was to take the property because she was the special object of testatrix's bounty, (i. e. persona designata). (1913) 37 Bom 116 (121) (DB).

(8) If there be a conveyance of real estate described in general terms followed by a definite and specific enumeration of particulars, as by schedule with or without plan, which enumeration omits something which might otherwise have been covered by the general description, then the designation by schedule and plan would not be read as an imperfect enumeration to be disregarded as "false demonstration" but as restrictive of the prior general description. So in a will if there be not a schedule and plan but an equivalent specific enumeration of particulars by name and locality, that specific enumeration must be held to limit and restrict what has gone before. (1908) 1 Ch 185 (196).

(9) The testatrix married D who had previously married her sister and had a son J. The testatrix always regarded and spoke of J as her son. A daughter K was born to the testatrix but she never married. J married and had before the death of the testatrix two children N and M. By her will the testatrix provided : "I devise and bequeath all . . . . . my real and personal estate . . . . . unto the Bank on trust for such of my grandchildren as shall be living at my death and attain the age of 21 years or previously marry and if more than one in equal shares absolutely." She had no lawful grandchildren living at her death or at any time during her life. Held that the testatrix had used the phrase "grandchildren" in a sense peculiar to herself but one which she had plainly indicated in her will as meaning N and M who were, therefore, entitled to the gift of the residuary estate. (1949) 2 All E R 551 (555).

Section 77 — Note 1

(1) A will ought to be read, if possible, so as to lead to a testacy and not an intestacy. (1885) 30 Ch D 390 (394).

(2) Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he has used and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention, as collected from the context. AIR 1929 Mad 64 (66). ((1858) 7 H L C 68, Rel. on.).

(3) Where there is an uncertainty as to the meaning of any part of a will, the Court has a right even to introduce words in case of necessity but the power of this kind must necessarily

Illustration

The testator gives a legacy of "five hundred" to his daughter A and a legacy of "five hundred rupees" to his daughter B. A will take a legacy of five hundred rupees.

[1865—S. 64.]

[*] Section applies to the wills of Hindus etc.—see Sch. III infra.

Section 77 — Note 1 (contd.)

be very cautiously exercised, not merely on a conjectural hypothesis of a testator's intention however reasonable in opposition to the plain and obvious sense of the language of the instrument. (1858) 7 H L C 68 (81).

(4) Where the main purpose and intention of the testator are ascertained to the satisfaction of the Court, if particular expressions are found in the will which are inconsistent with such intention, such expressions must be discarded or modified. On the other hand, if the will shows that the testator must necessarily have intended an interest to be given which there are no words in the will expressly to devise, the Court is to supply the defect by implication, and thus to mould the language of the testator, so as to carry into effect, the intention which the testator has. (1886) 33 Ch D 198 (206).

(5) The Court is not to introduce and interpolate unnecessarily words in a will, nor even to give a construction to any clause of a will contrary to what the plain words import, without an absolute necessity by intention declared or carried in some other part of the will. (1858) 7 H L C 68 (88). (Per Lord Cranworth.)

(6) Where it is clear on the face of a will that the testator has not accurately or completely expressed his meaning by the words he has used, and it is also clear what are the words which he has omitted, those words may be supplied in order to effectuate the intention, as collected from the context. Unless one can be reasonably certain from the context of the will itself what are the words which have been omitted one cannot apply the principle and one has to take the language as one finds it. (1955) 2 All E R 22 (28). ((1954) 3 All E R 478, Reversed.)

(7) The reading of words into a will as a matter of necessary implication is a measure which any Court of construction should apply with the greatest caution. Many wills contain slips and omissions. The Court cannot re-write the testamentary provisions in wills. (1957) 2 All E R 467 (469).

(8) The will of a Hindu testator ran: "After twenty years from my death my sons will be at liberty to divide the family business but before that my sons will be incompetent to divide the business. I have appointed my eldest son to carry on the business but before the lapse of twenty years from my death, neither he nor any of my other sons shall acquire any rights therein" Held that the words "rights therein" meant the rights of immediate enjoyment and that the testator gave the property to his sons in equal shares but postponed their separate enjoyment for twenty years. Such a restriction being repugnant to gifts was invalid. (1875) 1 Cal 104 (107, 108)=2 Ind App 256 (PC).

(9) Will, after appointing testators' brother as executor and directing him to pay debt and the maintenance of his wife and to make over the estate to his son when he comes of age, proceeded " but if my minor sons should die and my daughter should get married and a grandson be born, then on the said grandson's attaining majority you will give him half of my share and give half to your son etc." Held that the direction to make over the estate to the son when he comes of age has the effect of a gift to him to take effect at that time and the words "If my minor son dies" in order to be consistent with that must mean dies during minority. (1890) 17 Cal 122 (127)=16 Ind App 166 (PC).

(10) The testater made certain specific bequests and further provided: "All other money belonging to me I wish to be up in trust for my four grand-children.....until each reaches the age of twenty five years....." It was held that this disposition constituted a specific and not residuary gift. On the question of the nature of interest which the grandchildren took under the disposition. Held, that the ordinary rule of construction that no words should be inserted or read into the will, which were not there unless the context required it should be applied. Court could not imply a gift of corpus to the four grandchildren. Accordingly each named grandchild was entitled to an equal share in the income of the property until he or she attained the aga of 25 years, the income and capital of his or her share then being undisposed of. (1955) 2 All E R 316 (319).

(11) By his will the testator gave his residuary estate to his trustees on trust for his children, 4 daughters and 2 sons, in equal shares, the share of each daughter to be held by the trustees on trust to pay the income to her during her life and "after the death of such daughter my trustees shall hold such share and future income thereof upon trust for all or such one or more exclusively of the others or other of the children or remoter issue of such daughter and in default of and subject to any such appointment in trust" for all or any of her children, on attaining the age of twenty-one years or, if daughters, attaining that age or marrying, in equal shares. Held, that the will should be read by treating as added the words "as she shall appoint" after the words "such daughter" and before the words "and in default of and subject to any such appointment". (1955) 2 All E R 630 (631).

(12) A testator by his will devised and bequeathed the residue of his personal estate upon trust for the purpose of establishing and founding a bank. A clause of the will was: "I hereby declare that the object of the bank will be primarily to assist the planters and agriculturists of Saint Vincent by way of loans at a sufficiently low rate of interest as is compatible with the proper operation of the bank" : Held that it was impossible to regard the will as creating a trust for the general improvement of agriculture only or for such a purpose and purely ancillary purposes only. The ambit of the trust was wide enough to include loans which could not fairly be described as being for the promotion of agriculture or as being ancillary to that purpose. Restrictive words could not be imported into the terms of the trust and without them the trust was invalid as a charitable trust. (1955) 1 W L R 16 (19, 20).

78. Rejection of erroneous particulars in description of subject.*—If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, †and the bequest shall take effect.

Illustrations

(i) A bequeaths to B "my marsh-lands lying in L and in the occupation of X." The testator had marsh lands lying in L but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L will pass by the bequest.

(ii) The testator bequeaths to A "my zamindari of Rampur." He had an estate at Rampur but it was a taluq and not a zamindari. The taluq passes by this bequest.

[1865—S. 65.]

[*] Section applies to the wills of Hindus etc.—see Sch. III infra.

[†] Section is based on the maxim "Falsa demonstratio non nocet."

79. When part of description may not be rejected as erroneous.*—If a will mentions several circumstances as descriptive of the thing which, the testator intends to bequeath, and there is any property of his in respect of which all those

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Section 77—Note 1 (contd.)

(13) The instrument should be construed as a whole and the intention is to be spelt out from the entire document. If the instrument cannot be given any reasonable meaning or if the meaning of a particular word results in absurd conclusion or if no legal effect would be given to a particular clause the Court has wide power to construe the document in such a way that a reasonable meaning could be given to the whole document, if necessary, by adding particular word or words which has or have been omitted. ILR (1971) 1 Cal 513 (527).

Section 78 — Note 1

(1) Where some subject-matter is devised as a whole under a denomination which is applicable to the entire land and then that description is followed by words which are added on the principle of enumeration but which do not exhaust all the particulars, then the entirety, which has been expressly and definitely given, shall not be prejudiced by an imperfect and inaccurate enumeration of the particulars. (1894) 18 Bom 283 (288) (DB).

(2) A testator willed away his farm "in Little Bentley and Little Bromley in occupation of Mr. G and purchased by me from one T." Actually only a part of the farm was purchased from T, the remaining parts being purchased from one N: Held the words "purchased from T" ought to be treated as being in the nature not of a definition or restriction but of explanatory comment and as they do not fit the farm which was in G's occupation they should be disregarded. (1919) 1 Ch 297 (305, 306).

(3) Bequest of all that part of R estate purchased by testator consisting of six closes (named therein) to trustees in trust for his son J for life with remainder to the use of J's children as he would by his will appoint — J by his will appointing all property devised by his father's will and described as that part of R estate purchased by his father but mentioning only four closes to his two sons — The omitted closes lay between the other closes: Held the estate was sufficiently described in J's will and mention of four closes being falsa demonstratio could be rejected — That J's sons were entitled to all the closes. (1876) 6 Ch D 436 (444, 445).

(4) (Per Kishnan, J.) — The fact, that the testator having written two copies of the Will posted one with a covering letter to the legatee and retained one with him shows, in the absence of the covering letter, that it was not a final act and the testator was waiting for something more to happen.

(Per Newasker, J.) — It could not be said that the Will was in any way conditional and that the condition had not been fulfilled. ILR (1962) Madh Pra 815.

(5) (Per Newaskar and Pande, JJ.) — The Gujarati word "Vastu" in the Will held, meant chattel and was wide enough to include money deposits and claim on current account.

(Per Krishnan, J.)—The Gujarati word "Vastu" in the Will included only gold, silver ornaments and other goods ejusdem generis and did not include money on account. ILR (1962) Madh Pra 815.

(6) (Per Pande and Krishnan, JJ.; Newaskar J. Contra) — Order of a foreign Court, granting letters of administration to the legatee under the Will, cannot be of any assistance to the legatee in proving validity of the Will. ILR 54 Mad 727 held overruled by 60 I A 167. ILR (1962) Madh Pra 815.

(7) (Per Newaskar and Pande, JJ., Krishnan, J. contra) — The evidence of handwriting expert is not altogether without value when the will is in Gujarathi script with which the expert is not familiar. ILR (1962) Madh Pra 815.

(8) (Per Krishnan and Pande, JJ.) — Omission to examine the attesting witnesses by the plaintiff propounding a will, raises a presumption that they would not have supported the plaintiff. ILR (1962) Madh Pra 815.

Section 79 — Note 1

(1) Where a given subject is devised and there are found two species of property, the one precisely corresponding to the description in the devise and the other not completely answering thereto, the latter will be excluded. (1911) 33 All 66 (67) (DB) * AIR 1951 Sau 50 (52).

(2) If there is a conflict between the headnote and the statement in the body of the deed regarding description of properties, it is the latter that prevails. AIR 1972 Pat 146 (152).

circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 78 shall be deemed to have been struck out of the will.

Illustrations

(i) A bequeaths to B "my marsh-lands lying in L and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest will be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(ii) A bequeaths to B "my marsh-lands lying in L and in the occupation of X, comprising 1,000 bighas of lands." The testator had marsh-lands lying in L some of which were in the occupation of X and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement will be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

[1865—S. 66.]

[*] Section applies to the wills of Hindus etc.—see S. 57 supra & Sch. III infra.

80. Entrinsic evidence admissible in cases of latent ambiguity.*— Where the words of a will are unambiguous, but it is found by extrinsic evidence that they admit of application† one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations

(i) A man having two cousins of the name of Mary, bequeaths a sum of money to "my cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

Section 80 — Note 1

(1) The question was whether evidence was admissible to show that, having regard to the intention of the testator as expressed in the will the name "K. N. Godbole' applied to 'K. G. Godbole": Held that the case was not covered by S. 80, but applying principles of English law as principles of equity, justice and good conscience evidence could be taken to show circumstances habits and state of testator's family including names of his friends. AIR 1937 Bom 496 (496).

(2) The will of a Hindu ran as follows: "I have already become divided from my two sons *R* and *V*. I make the following dispositions of my share: (1) After paying the debts I have to pay under the partition arrangement, I bequeath to my daughter *A* all lands I own in Nalanchetil about 5½ velis and cash Rs. 10,000 with power of disposition over the same; (2) To my daughter *J* a sum of Rs. 10,000 with power of disposition over the same: (3) To my wife *S* the amount due under my policy of insurance; (4) I also direct that a sum of Rs. 10,000 (ten thousand) be set apart the interest from which is to be enjoyed by my mother *J A*, and my three sisters during their lifetime and after them the principal amount is to go to my son *R*; (5) The residue left after meeting the above dispositions is to be taken by my son *R* whom I appoint as the sole executor to my will": Held that there was no ambiguity in the terms of the will or as to the identity of the subject matter of any bequest or as to the identity of any beneficiary. Hence extrinsic evidence was not admissible. A I R 1947 P C 122 (124) = I L R (1947) Kar (PC) 217.

(3) Bequest by earlier clause to Mrs. *A* of "five row diamond bracelet." By later clause bequest to Lady G of "my diamond chain bracelet"—Testatrix having only one diamond bracelet"—accurately described as chain bracelet — Held case of latent ambiguity — Testatrix held meant to create bequest in favour of Mrs. *A*—Rule that later bequest prevails, held had no application. (1948) 2 All E R 111 (113).

(4) A philatelist gave his 'collection of stamps of Great Britain and such of the British colonies except Malta' from his collection to the first defendant. Amongst the philatelists the phrase 'British Colonials' was in general use. Evidence was also given that the phrase included stamps of all countries in the British Commonwealth and Mandated Territories and even the Republic of Eire, Egypt and Sudan: Held that the testator had expressed his intention in the language of philatelists and the expression used by him was equivalent to the phrase 'British Colonials' which was in vogue amongst the philatelists and that therefore the gift was effective to dispose of all categories of the stamps understood by the philatelists to be included in the phrase. (1955) 3 All E R 691 (693).

(5) Two wills executed on two dates — Later will raising ambiguity on face of it as to whether it was in substitution for or in addition to earlier will—External evidence can be admitted to ascertain testator's intentions. 1964 Ker L T 665.

(6) Section 80 embodies the well-established rule that in the case of a latent ambiguity the same may be removed by evidence of collateral circumstances to establish to what property the will relates or what exactly the subject of disposition is—Of course this cannot be done in the case of a patent ambiguity. (1971) 1 Mad L J 127 (136).

(ii) A, by his will, leaves to B "my estate called Sultanpur Khurd". It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

[1865—S. 67.]

[*] Section applies to the wills of Hindus etc.—See S, 57 & Sch. III.

[†] Oral evidence of intention is only admissible to show which of the persons or things was intended, and not to show that the words were used in a sense which would include more than one of them.

81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.*—Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations

(i) A man has an aunt, Caroline, and a cousin, Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "my aunt, Caroline" and 1,000 rupees to "my cousin Mary" and afterwards bequeaths 2,000 rupees to "my before-mentioned aunt, Mary". There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "my before-mentioned aunt, Mary." The bequest is therefore void for uncertainty under section 89.

(ii) A bequeaths 1,000 rupees to leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(iii) A bequeaths to B rupees, or "my estate of ". Evidence is not admissible to show what sum or what estate the testator intended to insert.

[1865—S. 68.]

[*] Section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

82. Meaning of clause to be collected from entire will.*—The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

Illustrations

(i) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

Section 81 — Note 1

(1) The words of the will were "I direct that my executor and trustee shall disburse various petty pensions to some poor persons mentioned by me" There is a deficiency, on the face of the will, as to the objects of this bequest and no extrinsic evidence can be admitted as to the intention of the testator. (1892) 15 Mad 448 (474).

(2) A made a will of her property on a printed will and left blank spaces naming therein certain specified legacies and the name of the executor. A was illegitimate and had no issue or "next of kin." The Crown claimed the residue of the estate by escheat and after admitting part of evidence on behalf of the executor it was held that the executor was entitled to hold the estate for his own benefit as the effect of the blanks left by the testatrix on a printed form was quite conceivable to be the belief that in doing so the executor should be entitled to the residue. (1886) 31 Ch D 460 (465).

(3) The circumstance that blank spaces were left in the body of it is no valid objection to its being a will. (1892) 16 Bom 652 (655) (DB).

(4) Where a will of a taluqdar was executed before 1869 S. 81 of the Succession Act cannot be applied and it is permissible to consider even extrinsic evidence to resolve a patent ambiguity. AIR 1948 Oudh 307 (334)=22 Luck 522 (DB).

(5) Relation of testator with legatee wrongly described — Intention of testator definite — Legatee identifiable from description in the will and evidence—There is no ambiguity or deficiency on the face of the will—Will is not void. AIR 1961 Assam 129 (131) (DB).

Section 82 — Note 1

(1) In the interpretation of the will, made by taluqdar, Court must be guided by the rule of construction laid down in Ss. 82 and 87 as these rules are applicable to bequest made by talukdars. AIR 1935 Oudh 198 (202)=10 Luck 606 (DB).

(2) In construing a will the meaning of any clause is to be collected from the entire instrument and all its parts are to be construed with reference to each other. The general words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense and it is only when two clauses in a will are so absolutely irreconcilable that they cannot stand together the latter of the two clauses shall prevail the theory being that the testator may have changed his mind. (1891) 14 Mad 65 (71) (DB)* AIR 1925 Bom 282 (286)=49 Bom 478 (DB).

(3) The two cardinal principles in the construction of wills, deeds and other documents

(ii) Where a testator having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first as if he had said "I give Black Acre to B, and all the rest of my estate to A."

[1865—S. 69.]

[*] Section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

Section 82 — Note 1 (contd.)

are (i) that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention (ii) that technical words or words of known legal import must have their legal effect even though the testator uses inconsistent words unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. (1897) 24 Cal 834 (846) = 24 Ind App 76 (PC)*(1908) 31 Mad 283 (304) (DB).

(4) Where a father appeared to make a gift of an absolute estate in the will to his sons, but some words which occurred subsequently plainly showed that what was given was no more than an estate for life, in spite of the fact that the subsequent provisions in the will for the grand-children on the death of the legatees failed (as none of the grand-children were in existence), the will conferred only a life estate on the sons. (1905) 28 Mad 386 (389) (DB).

(5) If a widow is designated as a malik or permanent malik in a will, that by itself is not sufficient to justify a Court construing the will to conclude that the intention of the testator is to confer an absolute estate on her and similarly it would be an incorrect mode of construction to accept such a clause as conferring an absolute estate and then to eliminate one by one all subsequent clauses indicating testator's intention to limit the widow's estate as void for repugnancy. This mode of interpretation contravenes S. 82 read with S. 87. AIR 1947 Lah 199 (205) (DB).

(6) The Court has to endeavour to ascertain the intention of the testator. This intention has to be gathered primarily from the language of the document. What is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised. In construing the language of the will the Courts are entitled and bound to bear in mind other matters than merely the words used. AIR 1951 S C 103 (105, 106)=1950 S C R 949. (AIR 1946 Mad 419, Reversed.)

(7) In order to gather the intention of the executant the language of the entire will shall have to be considered, further the interpretation given should be such as would give effect to all parts if possible and does not reject any of them and if there is any difficulty in giving effect to any part in the document it can only be solved by adopting a construction which brings out reasonable and probable intention and is not in any way inconsistent with the testator's views as gathered from his conduct and disposition in his will. AIR 1956 Hyd 153 (157) =ILR (1956) Hyd 107 (DB).

(8) The rule of construction of wills that so far as is reasonably possible Courts should adopt that construction of the will which would avoid intestacy cannot be treated as an absolute rule which should have overriding importance in construing a will. Similarly in regard to the rule that the construction which postpones the vesting of the estate after the death of the testator should be avoided, the position is exactly the same. A Court cannot embark on the task of construing a will with a preconceived notion that intestacy must be avoided or testing must not be postponed. The intention of the testator and the effect of the dispositions contained in the will must be decided by construing the will as a whole and giving the relevant clauses in the will their plain grammatical meaning considered together. In construing a will it is not generally profitable or useful to refer to the construction of other wills. AIR 1961 SC 1302 (1307).

(9) In construing a will, the true intention of the testator has to be gathered not by attaching importance to isolated expressions, but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory. Further, where the intention of the testator is to grant an absolute estate, an attempt to reduce the powers of the owner by imposing restraint on alienation is to be repelled on the ground of repugnancy; but where the restrictions are the primary things which the testator desires and they are consistent with the whole tenor of the will, it will be a material circumstance which will displace the presumption of absolute ownership. AIR 1960 Ker 54 (56) (DB).

(10) The will, in order to gather the correct intention of the testator, must be read as a whole, and if possible effect must be given to every one of the terms contained therein. AIR 1946 Oudh 20 (23).

(11) At the commencement of his will the testator stated: "I give my mother J. a life interest in all my immovable properties including leasehold properties and investments." Later on there was a direction that six items of immovable properties be sold and "on each of my eight children attaining majority, one-eighth of the sum realised by sale of these six mouzas shall be paid to her or him. The interest accruing from the said sale proceeds during my mother's life time shall be enjoyed by her exclusively." Held that the real intention of the testator was that the executrix should sell the mauzas and the sale proceeds should be invested, that the interest drawn from the investment should be enjoyed by the mother but that each of the children, on his or her attaining majority, should be paid the capital sum to which he or she is entitled, irrespective of the question whether the executrix was alive or not at that time. AIR 1951 Pat 206 (207, 208) = 30 Pat 86 (DB).

(12) The duty of the Court is to ascertain the intention of the testator and for that purpose regard must be had not only to the language in which the testator has written the will but also to the notions and habits of thought usual in the community to which he belongs. AIR 1954 Mad 19 (37, 38) (DB).

(13) The true intention of the testator has to be gathered not by attaching importance to

Section 82 — Note 1 (contd.)
isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory, AIR 1953 SC 7 (9) = 1953 S C R 232 ** AIR 1959 Andh Pra 448 (453) (DB) ** AIR 1967 S C 207 (208)=(1966) 3 S C R 446. (Question whether disposition of properties to the plaintiff is as a persona designata or by reason of his fulfilling particular legal status e.g., an adopted son.) ** I L R (1971) 1 Cal 513 (527) ** 1965 B L J R 410** AIR 1966 Pat 40 (41, (42) (DB)** AIR 1965 Mad 193 (196) = 77 Mad L W 691 ** AIR 1962 Mad 259 (261, 262)=(1962) 1 Mad L J 401 (DB). (One clause of the will is as important as the other and the dominant intention of the testator can only be gathered from the cumulative effect of all the clauses.) ** AIR 1953 All 766 (767) = 1953 All L J 315 (DB). (While construing a will all other surrounding circumstances must be taken into account.)

(14) The intention of the testator has to be gathered from the whole will—Bequest by father to his unmarried daughter with a provision that if she had children they should inherit her share and if she died without issue her share would revert to the grand son of the testator — Held on construction that the estate taken by the daughter under the will was absolute and not limited. (1950) 55 Mys H C R 115 (118, 120) (DB).

(15) Though a mere description of a document may not be conclusive to arrive at a correct conclusion as to its true nature, where a document was termed as a settlement deed and was registered and there was an express recital in the document that the donee shall pay the kist of the property : Held, that the transfer was effected, though the beneficial interest in the property had been postponed to be enjoyed after the life time of the settlor. The document therefore amounted to a settlement and not a will. AIR 1956 Mad 248 (248).

(16) Will is not a document transfering rights —It only changes the mode of devolution - Testator is competent to bequeath his properties to his nephews in preference to daughter's sons. Non-mention of property in schedule of property will not matter. 1966 All W R (HC) 142 (143).

(17) A holder of an impartible Raj after reciting that he was very ill stated: "Today K has given his son M to me in adoption and I have taken him in adoption. After my death, my adopted son, shall be the 'gaddinashin' and the owner of my entire moveable and immovable property. After my death he shall like myself, have all the powers. M is yet a minor; therefore during his minority, my mother, B who was my guardian during my minority and who managed the entire estate very well, shall remain the guardian of my adopted son and shall manage the entire estate. I have, therefore, executed this will while in a sound state of body and mind and after full deliberation — Held that the document was not a will. Taking the document as a whole the only operative part of it was the appointment of a guardian and the rest of it was narrative. As there were no direct words of gift in the will and as there was no object in giving to the adopted son property which he would have inherited under the law, the document could not be construed as containing a gift to M. AIR 1946 P C 103 (106)=ILR (1946) Kar (PC) 111.

(18) Will or present disposition — Held on facts that language used in document was consistent only with present disposition of property. AIR 1955 N U C (Sau) 5769.

(19) Where a gift or bequest is made in favour of more than one person, then whether the donees or the legatees take the property as joint tenants or tenants-in-common depends upon the intention of the donor or testator as could be gathered from the gift deed or the will and the other surrounding circumstances. No such question of finding out the intention of the donor or testator arises where the intention is apparent on the face of the document. AIR 1952 Mys 32 (33, 34)=ILR (1952) Mys 139 (DB).

(20) Property bequeathed to heirs with direction to pay increasingly to charity on happening of certain contingencies — Last contingency taking place — Held, direction created trust and not charge. (1962) 2 S C R 28.

(21) No Court has a right to make out a new will for a testator if the old will made by him is not capable of an interpretation which would validate it. The mere fact that a life estate in the corpus is not recognised under the Mahomedan Law would not justify the Courts in holding that it was a life estate in the usufruct that was intended to be created when the document read as a whole and giving the natural meaning to the language used is not capable of that interpretation. AIR 1952 All 1 (4, 5) (DB).

(22) Intestacy is not to be lightly inferred. Yet where there is no clause in the will about devise of property to be acquired by testator after the date of the will and it is clear from the will that at the time of making it, he had no intention of acquiring any further properties and could not also have thought of making disposition of such property, property so acquired cannot be held to be covered by the will. Though the intention of the testator is to be given effect to there being no doubt about such intention intestacy as to such items arises not on a construction of the will but from the express recitals in the will itself. AIR 1967 Mad 404 (406)= (1967) 1 M L J 96.

(23) Testator bequesthing all his present and future property to one of his sons with all rights of transfer — Other heirs given only right of residence in a house on condition of their good character and with consent of legatee but without any proprietary rights—Testator closing his will with a statement that he had full confidence that legatee would observe all conditions laid down by him — Held that direction regarding residence of heirs was only pious wish and not mandatory injunction to legatee so as to create legal right in heirs. AIR 1966 All 584 (586)= 1966 All L J 1153.

(24) The words expressing the conditions subject to which a bequest is made by a testator in his will may sometimes be treated as words creating a charge on the property bequeathed. Where a charge is in terms created on the property bequeathed, although the bequest is expressed to be on condition of the payment of a specified amount the clause in question has to be interpreted to mean that the bequest is subject to a charge for the specified amount. AIR 1952 Bom 203 (204, 205)=53 Bom L R 903.

(25) According to provisions of will power to appoint new executor or trustee in place of the deceased or retiring trustees given to remaining executor and trustees, and in no circumstances

83. When words may be understood in restricted sense, and when in sense wider than usual.*— General words† may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense ; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations

(i) A testator gives to A "my farm in the occupation of B," and to C "all my marsh-lands in L". Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in L. The general words, "all my marsh-lands in L." are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(ii) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend, A (a shipmate), his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(iii) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

[1865—S. 70.]

[*] Section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

[†] Words commonly used in wills drawn in England are Debenture, Debts, Funds, Goods. Household effects, Household furniture, Household goods, Linen, Ready money etc.

Section 82 — Note 1 (contd.)

the number of trustees to be less than two for three consecutive months—Application to Court for appointment of new executor in place of deceased — Two days' delay over three months in appointment of new trustee by Court — Held, order of appointment was illegal and without jurisdiction — No party could set up any right or title as executor on such order passed without jurisdiction — Correct and legal way to have the estate left unadministered to be administered was to apply for the grant of Letters of Administration de bonis non. AIR 1961 Cal 411 (415).

(26) Where the intention of the donor or testator is to maintain an absolute estate conferred on the donee but he adds some restriction in derogation of the incidents of such absolute ownership the clause is a repugnant one and is therefore, void. If however the intention expressed, or to be necessarily implied, is to extinguish the absolute estate on the happening of a contingency and where the effect of the termination of the said absolute estate would not be the violation of any rule of law, the clause is a defeasance clause and would operate according to its tenor. In such a case the earlier clause confers only a life estate. AIR 1962 Ker 322 (323)=1962 Ker L J 149 (DB).

(27) Two wills executed on two dates — Later will raising ambiguity on face of it as to whether it was in substitution for or in addition to earlier will—External evidence can be admitted to ascertain testator's intentions. AIR 1965 Ker 122 (123)=1964 Ker L T 665.

(28) It is true, if there is conflict between two or more clauses in a will, the last clause should prevail over the earlier clauses. But inconsistency will not be presumed. Moreover, every ambiguity is not inconsistency. What is of the essence is the true intention of the testator. In finding out that intention the Court must read, the Will as a whole and to the extent possible reconcile the various clauses in the Will. Further, no clause in the will should be considered as superfluous. The rule of harmonious construction is one of the essential canons of interpretation of a Will or a deed. (1963) 2 Mys L J 437 (DB).

(29) In construing a will it is generally not profitable or useful to refer to the construction of other wills because the construction of each will must necessarily depend upon the terms used by the will considered as a whole, and the result which follows on a fair and reasonable construction of the said words must vary from will to will. AIR 1962 Pat 149 (154).

(30) In the case of a will the onus is on the propounder of the will. He has to establish that the will was executed by the testator, and that at the time of execution he was a free agent & possessed of sound disposing state of mind. Proof of a will and of other documents cannot be the same. (1965) 2 Mad L J 259.

Section 83 — Note 1

(1) If the instrument as it stands cannot be given any reasonable meaning or if the meaning of a particular word results in absurd conclusion or if no legal effect could be given to a particular clause of the instrument the court has got wide powers to construe the document in such a way that a reasonable meaning could be given to the whole document if necessary by adding particular word or words which has or have been omitted, ILR (1971) 1 Cal 513 (527).

(2) When used in a will principal money means all the capital that the testator possessed and a 'gift of principal money by will' means a universal disposition of all his monies worth, that is a bequest of all personal property. The words cannot be extended to the real estate. (1870) 11 Eq 232 (235).

(3) In a provision 'I give and bequeath unto my wife monies in bank securities, my household furniture and effects of whatever nature and kind I may be possessed at the time of my decease,' the word "effects" must be confined to

84. **Which of two possible constructions preferred.*** — Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

[1865—S. 71.]

[*] Section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

85. **No part rejected, if it can be reasonably construed.*** — No part of a will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

[1865—S. 72.]

[*] Section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

Section 83 — Note 1 (contd.)

articles ejusdem generis with those specified in the preceding part of the sentence. (1806) 13 Ves 39 (46)=33 E R 209.

[See also (1841) 3 Beav 521 (523) = 49 E R 205.]

(4) Fixed abode does not necessarily mean permanent abode. AIR 1923 Nag 145 (145)=19 Nag L R 54.

(5) Word "santanera" ordinarily includes sons and daughters, but surrounding circumstances may give it restricted meaning to include sons only — Word held should be given restricted meaning. ILR (1949) 2 Cal 67 (72, 74).

Section 84 — Note 1

(1) A by an "anumatipatra" permitted after his death his two wives to adopt "three sons successively" that is one after another, it was held that the authority intended his widows to do what the law allowed and not to do something which if not absoluteiy illegal was very unusual and not practiced among Hindus. It did not contemplate simultaneoue adoption by widows but successive adoptions in accordance with rules of law as now established and as established at the time when the document came into existence. (1912) 39 Cal 582 (586) (DB) * (1912) 16 Cal L Jour 304 (308) (DB).

(2) An earlier clause in a will stated "you must adopt for me a boy you like from the children that may be born in the families of my brother." Later on the testator mentioned "the object of this will is that you should adopt for me any suitable boy." Held that the choice of the boy was restricted to the boys from brother's family. (1891) 14 Mad 65 (69) (DB).

(3) Testator gave direction in the following words: "There is my nephew M's son K. He is about nine years of age. It is my wish to adopt him as my son. If I should not be able to do so in my lifetime then my son L's widow is to take the said K in adoption:" — Held that it was a direction to adopt a son to her husband and herself and not to the testator which she was not entitled to do according to law. (1888) 12 Bom 185 (199).

(4) When it is suggested that the testator created some interests in the property he was disposing of and yet failed to fully dispose of it the Court will, if there are two possible constructions, prefer the one that resulted in favour of that which does not leave a hiatus. The presumption in such a case is in favour of a complete disposition. (1954) 56 Bom L R 910 (915) * * AIR 1963 S C 1703 (1705)=(1963) 2 SCR (Supp) 834.

(5) If there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereal." AIR 1959 S C 24 (29) =1959 S C R 1309.

(6) If the instrument as it stands cannot be given reasonable meaning the Court has got wide power to construe it so as to give a reasonable meaning even by adding particular word which has been omitted. ILR (1971) 1 Cal 513 (527).

Section 85 — Note 1

(1) In construing the will of an exceedingly illiterate man the rules of grammar and the usual meaning of technical language may be disregarded but the Court cannot strike out from his will any word which, standing where it is, has a clear and definite operation in the disposal of his property. (1861) 9 H L 420 (427) = 11 E R 791.

(2) Where a will by a Parsi provided that in case his son dies issueless son's widow should be excluded from getting any share in the property and the son died issueless it was held that his widow was excluded from any share whether as heir of her husband or otherwise. AIR 1919 Sind 4 (5) = 14 Sind L R 203.

(3) In construing English wills it has not been the practice to pay regard to the punctuation or parenthesis. But the circumstance that there is no such thing as punctuation properly so called in native writings but merely a practice by no means general which has grown up of making a dot to denote to end a sentence, gives the existence of a dot a special importance which the Court may take note of without any risk. (1888) 12 Bom 202 (214).

(4) Testator making various gifts of immovable property to various persons one amongst them being to his widowed daughter-in-law for her maintenance — Will wound up with a general clause that all the gifts were made absolute — Held that the general clause removed the ambiguity in all cases and that it was not necessary to strike out or alter a material word in any one of the special clauses in order to give effect to the several devices and that therefore the widow also took absolutely the land gifted to her in the will. (1908) 31 Mad 349 (353).

(5) The material words of a will were: My self-acquired property the aforesaid houses by the three devisees from generation to generation (Vamsa Paramparai) unitedly (or jointly — "Egopithu") the survivors surviving without

86. Interpretation of words repeated in different parts of will.*—If the same words occur in different parts of the same will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.†

[1865—S, 73.]

[*] Section applies to the wills of Hindus etc.—See S. 57 and Sch. III.

[†] But this would not preclude the Court from putting a different construction on the same words, when applied to different subject-matters.

87. Testator's intention to be effectuated as far as possible.* — The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration

The testator by a will made on his death-bed bequeathed all his property to C. D. for life and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent because the gift to the hospital is void under section 118, but it will take effect so far as regards the gift to C. D.

[1865—S. 74.]

[*] Section applies to the wills of Hindus etc.—See S. 57 and Sch. III.

Section 85 — Note 1 (contd.)

power of gift etc., or sale shall be enjoyed—Held that the word "Egopithu" should be given effect to in reading the will and so reading the will was held to establish a line of descent unknown to law. (1909) 5 Mad L Tim 103 (104, 105).

(6) Wife given right to gift or sell and to 'R' rights to Malik after her death — Held, presumption of life estate cannot be drawn and right to gift or sell being incidents of ownership wife gets absolute estate. AIR 1966 Orissa 54 (57, 58, 59) = I L R (1964) Cut 479.

(7) No clause in the will should be considered as superfluous. (1963) 2 Mys L J 437 (441).

Section 86 — Note 1

(1) If the same words occur in different parts of the will, they must be taken to have been used everywhere in the same sense unless a contrary intention appears. AIR 1935 Oudh 198 (202) (DB) ** (1910) 11 Cal L Jour 461 (473) (DB). ** (1908) 31 Mad 283 (305) (DB). (Will directing income from property to be spent on property "as to her may seem best" — The words, held on construction to mean "as she thinks fit".) * * AIR 1963 S C 1703 (1705) = (1963) 2 S C R (Supp) 834.

(2) Use of adhikarini and adhikari denotes full ownership — Widow granted full powers of transfer — Held, estate granted to widow was absolute and not limited. AIR 1963 Cal 520 (523) (DB).

Section 87 — Note 1

(1) If it is not possible to carry out testator's whole plan, paramount intention should be given effect to. AIR 1929 PC 283 (286) =56 Ind App 372 ** (1963) 2 Mys L J 437 (442). (Courts are expected to place themselves in the arm chair of the testator and find out his intentions.)

(2) Court has no power to give effect to a hypothetical intention by supplying lacunae in the will, and thereby making practically a new will for the testator. AIR 1959 Pat 585 (588) = 1959 BLJR 505.

(3) In interpreting will made by a taluqdar, the Court must be guided by the rules of construction laid down in Ss. 82 to 87, as these rules are applicable to bequests made by taluqdars. AIR 1935 Oudh 198 (202) = 10 Luck 606 (DB).

(4) In construing a Hindu will benignant construction is to be used and if the real meaning of the document can be reasonably ascertained from the language used, though the language is ungrammatical or untechnical or incorrect provided it sufficiently indicates what was meant, that meaning shall be enforced to the extent and in the form which the law allows. AIR 1935 Cal 284 (286) (DB) **(1872) 18 Suth W R 359 (364) = Ind App (Sup Vol) 47 (PC).

(5) Where in a will, there is no gift in so many words and an intention to make a gift can be gathered from the provisions in certain and definite shares effect should be given to the general prevailing intention, however imperfectly and obscurely indicated if discovered by a fair and liberal construction of the language of the will and it allowed by law. (1881) 7 Cal 269 (282, 283) (DB).

(6) Court will struggle against a construction that would defeat the obvious intention of the testator. (1807) 13 Ves 476 (484) =33 E R 373.

(7) If the dispositive words are clear and unambigious, the Court is bound to enforce them. But where they are ambiguous, it is necessary to ascertain the declared intention of the testator from other clauses of the will and also the surrounding circumstances. 1956 Andh L T 940.

(8) Misrecital as to law not followed by disposition does not prove intention to supplement what would be got under law. A I R 1935 Cal 788 (790) (DB).

(9) The gift by a testator if there be any must be found either in express words or by implication. Where a testator declares that a person has right independent of will a mere recital to that effect in the will is no evidence of intention to gift nor is there gift by implication. AIR 1935 Cal 788 (791) (DB).

(10) Property bequeathed to heirs with direction to pay increasingly to charity on happening of certain contingencies — Last contingency taking place — Held, direction created trust and not charge. (1962) 2 SCR 28.

88. **The last of two inconsistent clauses prevails.*** — Where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.†

Illustrations

(i) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B will have it.

(ii) If a man, at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition will prevail.

[1865—S. 75.]

[*] Section applies to the wills of Hindus etc.—See S. 57 and Sch. III.

[†] But see Ss. 82 & 85 supra.

Section 87 — Note 1 (contd.)

(11) It is seldom profitable to compare the words of one will with those of another precedents are helpful only in so far as they purport to lay down certain general principles of construction and at the present these principles seem to be fairly well settled.

The cardinal maxim to be observed is to endeavour to ascertain the intention of the testator and it has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation.

A presumption against intestacy may be raised if it is justified by the context of the document or surrounding circumstances; but it can be invoked only when there is undoubted ambiguity in ascertainment of the intentions of the testator. AIR 1951 SC 103 = 1950 SCR 949 **AIR 1964 SC 1323 (1329) = (1964) 2 SCR 722.

(12) In the case of a bequest of property equally in favour of two or more persons and a gift over to the descendants of one of them, the gift over will come into operation, only after the death of all the original beneficiaries, the principle of construction being that the original beneficiaries took the properties as tenants-in-common for life with a life interest in remainder of the survivor or survivors on the death of one of them. The Court would imply in such cases a cross-remainder for life between the beneficiaries. AIR 1958 Mad 334 (336, 337) = (1958) 1 Mad L J 289 (DB).

(13) Widow making will in favour of her father and brother — Will challenged as forged by widow's brother-in-law — Widow and brother-in-law not on good terms — Circumstances showing that Will was genuine — Genuineness of Will liable to be upheld. ILR (1965) Cut 15.

(14) The mere fact that the property is given for the purposes of maintenance does not mean that the property was not given absolutely especially when there are no indications in the document that the property was given for life. AIR 1967 Punj 429 (429) = 1967 Cur L J 87.

Section 88 — Note 1

(1) The general rule that if there be a repugnancy the first words in a deed and the last words in a will, shall prevail has no application when the supposed inconsistencies are found in one and the same provision. (1905) 29 Bom 375 (381) (DB).

(2) If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, it is the earlier clause that must override the later clauses and not vice versa. AIR 1959 S C 24 (29) = 1959 S C R 1309 ** AIR 1965 Andh Pra 226 (228)=(1965) 1 Andh W R 429 (DB). (Section 88, Succession Act does not apply to interpretation of deeds.) ** AIR 1962 Ker 322 (323) = 1962 Ker L J 149 (DB) ** 1956 Andh W R 582. (Estate of inheritance in the first instance conferred on legatee by dispositive words of will — Subsequent restrictive clauses are inoperative.)

[But see (1963) 2 Mys L J 437 (441), (Will — Construction — Conflict between clauses — Rule of harmonious construction.)]

(3) The rule laid down by this section should only be applied in the last resort. AIR 1925 Bom 282 (286) = 49 Bom 478 (DB).

(4) A construction which totally destroys one clause and gives effect only to the other should, as far as possible, be avoided. There is another equally important rule of construction which is embodied in S, 88. (1966) 1 Andh W R 272 (274). (Two gifts, wholly inconsistent under a will in favour of two different persons in respect of the same property—Court should first attempt to give effect to both — But if that is impossible, S. 88 must be resorted to for a solution.)

(5) Section 75 of Act X of 1865 cannot be applied to will executed in mofussil. AIR 1926 Mad 492 (493) (DB).

(6) Where a testator made his widow an absolute owner of his entire property after his death but provided by a subsequent clause that she should give a certain house to one of his relations — Held, that the subsequent clause must be given effect to. AIR 1931 Nag 69 (69, 70).

(7) Held, that term 15 was a later term than term 12. It did not restrict the bequest in favour of J. That being so the earlier clause restricting the enjoyment of the property until the complete administration of the estate must be considered to be repugnant to the vested interest, and it should, therefore, be deemed to be void. AIR 1959 Cal 171 (172) (DB).

(8) Where the testator in his will says that each of the daughters will take the property allotted to her absolutely and with full powers of alienation, but in a subsequent portion of the will, he says that, if any of the daughters has no issue, she shall enjoy the property during her lifetime without subjecting it to any encumbrance and that the property shall on her death pass over to her sister or sisters who have heirs, the later part should be read as a proviso to the earlier part. AIR 1958 Mad 431 (432, 433).

(9) Properties A and B set apart separately for grandson and widow — After death of widow, B properties to be taken equally by sons and 'if grandson attain majority, B properties to be

89. Will or bequest void for uncertainty.*—A will or bequest not expressive of any definite† intention is void for uncertainty.

Illustration

If a testator says "I bequeath goods to A," or "I bequeathed to A," or "I leave to A all the goods mentioned in the Schedule" and no Schedule is found, or "I bequeath 'money' 'wheat', 'oil'," or the like, without saying how much, this is void.

[1865—S. 76.]

[*] Section applies to the wills of Hindus etc.—See S. 57 and Sch. III.

[†] A reasonable degree of reasonableness would suffice.

Section 88 — Note 1 (contd.)

surrendered to him' — Mention' of B properties not a clerical mistake for A properties — It was not impossible to give a rational meaning to the provision for surrender of B properties to grandson on his attainment of majority even though the prior disposition of the same in favour of sons was apparently absolute in its terms. AIR 1962 Ker 323 (Pr 7).

(10) Although inconsistent bequest does not necessarily in all cases displace the assertion that there was a disposing state of mind, still it would to some extent create a suspicion as to the sufficient power of understanding on the part of the testator. (1966) 6 Law Rep 422 (442) (Mys).

(11) Testator giving property to wife absolutely — Interest of daughters expressed in subsequent clauses — Life estate and not absolute estate held was created in favour of wife. AIR 1962 Mad 247 (249) = (1962) 2 Mad L J 187 ** AIR 1962 Mad 259 (261, 262, 263) = (1962) 1 Mad L J 401. (Absolute estate to daughters — Restriction in case of certain contingency — Defeasance clause — Daughters took only a life estate.)

(12) Will reciting that after the testator's death his daughter-in law K would enter into possession and enjoy the properties — Further direction that after K's lifetime her two daughters should get properties absolutely with powers of alienation — Held that K got only limited interest — Interest of her daughters were not contingent. AIR 1973 Mad 21 (22, 24) = (1972) 1 Mad L J 481.

Section 89 — Synopsis

1. Will or bequest void for uncertainty.
2. Bequests for charitable purpose.
3. Bequests for "Dharma".
4. Devisee's right to choose.

1. Will or bequest void for uncertainty. — (1) Section 89 does not apply to a will executed by a talukdar before the passing of the Oudh Estates Act 1 of 1869, but the principle of the section, will apply and even those wills, if they are framed in such uncertain language that it is not possible to determine in whose favour they operate must fail. A I R 1948 Oudh 307 (334)=22 Luck 522 (DB).

(2) The ground on which a bequest which is for an uncertain object is held to be void is that the Court cannot properly supervise the administration of the trust and see to the carrying out of the object which the testator might have had in his view. The same argument will apply where, though the object of the bequest is specified, the amount of money which is to be spent on that object is left uncertain. AIR 1952 Nag 242 (243)=ILR (1949) Nag 765 (DB).

(3) Will — Bequest for a building for Hindus exclusively for general purposes is void for uncertainty. AIR 1932 Bom 451 (452).

(4) The dedication to the "Thakurjee" in his 'Thakurdwara' without mentioning the particular deity which was subsequently to be installed in a temple was bad on the ground of uncertainty. (1911) 33 All 793 (795) (DB).

(5) "The executors shall get a Shiva's temple erected at reasonable cost in a suitable plan in my 'baithakkhana' " was sufficiently definite to constitute valid bequest, while a bequest that 'the executors shall spend the residue on proper and just acts for the testator's benefit' was held void for uncertainty. (1887) 14 Cal 222 (223) (DB).

(6) Where the intention of the testator is very definite and clear and the person sought to be benefited can be definitely identified from the description given in the will as well as from the evidence the fact that the relation with the testator has been wrongly described in the will will not amount to any ambiguity or deficiency on the face of the will and S. 89 will not apply to make the will void for uncertainty. AIR 1961 Assam 129 (131) (DB).

(7) Where a property was not bequeathed to any trustee as such and G was referred to in the will only as the manager of the Sounsthan which was said to be already in existence it was held that there was no uncertainty as to the object of the bequest and therefore the will was not void. AIR 1959 Bom 287 (288) = ILR (1959) Bom 210.

(8) Held, (1) that there was a bequest in favour of B of all the movable and immovable properties of the testator, subject to the payment of maintenance to the testator's sister and concubine. The maintenance was clearly payable out of the profits of the properties of the testator demised in favour of B, the legatee and therefore they had the right to enforce this maintenance against B because the latter could not have the benefit of the legacy without discharging the obligation with which it was burdened. Hence, the instrument was not void for uncertainty and was capable of being probated in favour of B. A I R 1955 Assam 81 (84) (DB).

(9) Premises leased to firm of which P was partner—Living accommodation sub-leased to P — Owner of premises by will giving direction that rent of house "which P occupies" should not be increased in any manner, and P given option for renewal of lease—Held that by P, the testator meant the firm of which he was partner; and that the will was not void for uncertainty. AIR 1949 P C 46 (47).

(10) In the case of a power conferred on the donee there can be no question of the testator's

Section 89 — Note 1 (contd.)
direction being defective for uncertainty. A I R 1957 Bom 218 (221)=ILR (1958) Bom 21 (DB).

(11) A direction or trust in favour of a third party will be regarded as binding and obligatory where such a binding obligation can be clearly ascertained from the will. A mere wish or desire or confidence or hope on the part of the testator that the donee of the fund should or would or ought to or is expected to apply it for the benefit of other persons will not be enforced or treated as obligatory. (1899) 23 Bom 1 (10) ** (1895) 2 Ch 370 (374).

(12) In the case of precatory trusts the words of gift used by the testator must be such that the Court finds them to be imperative on the first taker of the property and the subject of the gift over must be well defined and certain. If there is uncertainty as to the amount or nature of the property that is given over a difficulty in the execution of the trust arises. The uncertainty in the subject of the gift will have a reflex action upon the previous words and throw doubts upon the intentions of the testator as his words of appeal to the conscience of the first taker would not show that he intended them to be imperative. (1882) 4 All 500 (510).

(13) The question whether a particular statement does or does not contain a bequest or a testamentary disposition is a question of fact. AIR 1947 Lah 49 (53).

(14) A clause in a will ran as follows : "As my son V is of weak mind and is unfit to manage his own affairs, my senior son-in-law, B shall be his guardian and shall manage all affairs. B shall have control over the whole of my son's property and he shall protect my son and safeguard my son's property. In regard to the management of the business in my shop and in regard to the collection of the amounts due to me from others, I appoint B as guardian of my son and confer all powers on the former" : Held that as V had no property of his own, the testator, when he was speaking of his son's property he could only have been referring to property that became his son's by virtue of the will that he was executing. The clause, sufficiently indicated the intention of the testator to give his property to his son V, which could be given effect to. (1947) 2 Mad L J 247 (249) (DB).

(15) A will after appointing three persons as executors said "you should give my brothers, their wives and children according to your wishes" : Held that these words merely gave a discretionary power to the executors; they did not create a power in the nature of a trust. (1886) 9 Mad 325 (330).

(16) A will commenced 'I desire M to pay every month my dependants and personal servants" and also "Be it known that the expenses of imambara etc. will be continued for ever" and "the pay of G and A will be defrayed for ever and the rest of the servants will be paid only for life" constituted a bequest and not merely the expression of a wish or a direction. (1882) 8 Cal 1 (6) = 8 Ind App 117 (PC).

English cases

(17) Where a testator bequeathed legacies to his grandchildren on their marriages according to the rites of Jewish faith to persons of Jewish race and religion the bequests were void for uncertainty. (1958) 1 W L R 1157 (1160).

(18) A clause in the will of the testator provided that his daughter was to suffer a forfeiture in respect of an annuity which the testator provided for, in case she "shall, in the uncontrolled opinion of the trustee, have social or other relationship" with a certain lady—Held, that the provisions for forfeiture were void for uncertainty. (1953) 1 All E R 357 (361).

(19) Held (1) that the discretionary trusts contained in para (c) of Cl. (4) of the will were void for uncertainty and that clause also offended against the rule against perpetuities because N might marry a woman who was not in being at the date of the testatrix's death. (2) that the gift of the capital to charitable institutions which took effect upon the termination of the widow's life interest was unaffected by the invalidity of the trusts aforesaid and was perfectly valid. (1958) 1 W L R 220 (222, 223, 224).

(20) Where the condition in a will is not that the estate shall last so long as the occupation lasts but it is one which is satisfied once there is occupation and the chattels and money belong absolutely to the person who fulfils the condition, there must be a certainty ab initio as to what he must do in order to fulfil it. Where it is not possible to say what would be sufficient occupation to entitle him to call on the trustees to hand over the chattels and fund to him the condition, being a subsequent condition, is void. (1950) 2 All E R 188 (190).

(21) Where the testator stated that, if his wife felt that he had forgotten any friend, he directed his executors "to pay such friend or friends as are nominated by my wife a sum..... per friend,"—Held that if the power conferred on the wife were a power coupled with a duty it would have been bad. As the power was only a collateral power that requirement was not necessary and therefore the power was valid. (1955) 1 All E R 26 (28).

2. Bequests for charitable purposes.—(1) In a will the testator directed his trustees to divide his estate to charitable religious institutions and the testator had not given a class from which he allowed his trustees to selcet individually but had left directions so vague that it was in effect giving some one else power to make a will for himself. Law will not allow this and bequest is void. 1905 App Cas 124 (126) ** (1902) 26 Bom 632 (636).

[See however (1908) 30 All 111 (115) (DB).]

English cases

(2) In the case of a gift to a charity where no general charitable intention is present, then if the charity has ceased to exist before the will comes into operation the gift lapses. If the charity is still in existence at the date mentioned it is effective as a gift to the extent that the interests of the next of kin are forever excluded notwithstanding the later dissolution or disappearance of the charity. In these respects the "charity" is assimilated to an ordinary individual legatee. (1958) 2 W L R 66 (69).

(3) In the case of a gift, not to a named charity but for some charitable purpose, where there is no general charitable intention the gift will wholly fail if the purpose is either so vague or uncertain or so impracticable that the Court cannot execute it. But the test of vague-

90. Words describing subject refer to property answering description at testator's death.*—The description contained in a will of property, the subject of gift, shall, unless a contrary intention appears by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

[1865—S. 77.]

[*] Section applies to the will of Hindus etc.—See S. 57 and Sch. III.

Section 89—Note 2 (contd.)
ness or uncertainty or impracticability is to be applied at the date of the testator's death. (1958) 2 W L R 66 (70).

(4) Where the object of a gift by will to a trust was the training of singers of serious music for aesthetic purposes for the benefit of the public and not for the benefit of individual singers it was held that the gift was for a charitable purpose and therefore was not invalid on the ground of uncertainty. (1955) 3 All E R 35 (39, 40).

(5) The bequest of a fund to the holder of an office of a charitable character virtute officii is a gift on trusts exclusively appropriate to the office by which the donee is described and the absolute discretion as to the application of the fund conferred by the testator would stand limited to those trusts which are exclusively appropriate to that office. Therefore there is no ground for holding that the fund has become capable of being applied to objects other than charitable by reason of the conferment of that discretion and that the gift is on that ground bad. (1955) 3 All E R 71 (81).

3. Bequests for "Dharma."—(1) A bequest for "Dharma" "khairat" etc., is void for uncertainty. A I R 1929 Bom 127 (127). (23 Bom 725 (PC), Followed.)**(1899) 23 Bom 725 (735) =26 Ind App 71 (PC).

[But see (1907) 30 Mad 340 (344) (DB). (Per Subramania Iyer J.)]

(2) The dedication of property by will for "dharma kriya" in connexion with death is for a definite object and not void for uncertainty. AIR 1930 Bom 191 (193)=54 Bom 358.

4. Devisee's right to choose.—(1) Section 89 applies only to those cases where a will is so indefinite that it is not possible to give any definite intention to it at all. But there may be wills which use words which are not so uncertain that a definite intention cannot be ascribed to the testator under those words. There are three possibilities of such types (i) the testator himself may indicate what he intends to bequeath and that indication is sufficient to identify the property bequeathed. (ii) Where the testator himself does not make a selection but nominates a third person who may select the object of his bounty meant for the legatee. (iii) Where the testator has not indicated the selection himself and has not nominated a third person to make the selection; but still the gift is not so uncertain as to be void. It is in such cases that English Courts have evolved the benevolent rule that the testator intended to give the selection to the legatee and once the selection is made by the legatee the will takes effect. This rule of common sense to give effect to wills which are not quite uncertain and which can be made certain may, in appropriate cases be extended to India. AIR 1961 S C 1128 (1130, 1131).

(2) If a man devises two acres out of four acres that lie together this is a good devise and the devisee shall select his portion of land. (1895) 18 Mad 460 (462) (DB).

(3) A testator who by his will intends to give a particular property to the legatee and owing to the testator having several properties answering the description in the will of the particular property given the Court is unable to say which of the several properties the testator referred to then on principle the gift must fail for uncertainty. (1894) 3 Ch 260 (263).

Section 90 — Note 1

(1) Section 90 contains a broad principle underlying the interpretation of wills. The effect of the section is that a bequest passes not that property which the testator means to leave at the time of executing the will but whatever is in existence at the time of his death. It may be that some property may cease to exist after the execution of the will and before the death of the testator or the testator may acquire property after the execution of the will and before his death. So unless there is a specific mention in the will itself, the property which is left at the time of the testator's death passes to the legatee and on that principle the will would speak as at the death of the testator and not as at the time it is made. ILR (1953) 3 Raj 1013 (1017) (DB).

(2) The provisions of this section made one read the will as speaking from the death and therefore a gift of "so many shares" must be a gift of so many shares as they are found by the executor. (1909) 1 Ch 345 (353).

(3) Under S. 90 there is a presumption, unless a contrary intention appears by the will, that it comprises all property as at the testator's death and in the absence of any indication of testator's intention to exclude after acquisitions from the operation of the will, presumption against an intestacy in respect of those properties must prevail. A I R 1927 Mad 383 (386) (DB) ** AIR 1946 Mad 12 (13) ** AIR 1932 Nag 163 (165)=28 Nag L R 255.

(4) Bequest of property known as "Rahemat Manor" — On date of will property consisting of one building and open space — Three more buildings of different names constructed subsequently on open space — Entire property known as "Rahemat Manor" at the time of death— Held all the buildings passed under the will. AIR 1947 Bom 122 (131)=ILR (1947) Bom 1.

(5) Under Cochin Law there is no provision corresponding to S. 24 of the English Wills Act, 1837 or to S. 90 of the Act, 1925. The provision under the common law of England before the statute of 1837 was that a testamentary disposition of real property spoke as of the time of the execution of the will and not as of the time of the death of the testator. Consequently the rule was well settled that a will, in so far as it involved real property, did not operate to pass land subsequently acquired.

91. Power of appointment executed by general bequest. — Unless a contrary intention appears by the will* a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

[1865—S. 78.]

[*] i. e., unless there is something in the will inconsistent with a view that the general devise was meant as an execution of the power.

92. Implied gift to objects of power in default of appointment.—Where property is bequeathed to or for the benefit of certain objects as a specified person may appoint or for the benefit of certain objects in such proportions as a specified person may appoint, and the will does not provide for the event of no appointment being made; if the power given by the will is not exercised, the property belongs to all the objects of the power in equal shares.*

Ilustration

A, by his will, bequeaths a fund to his wife, for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund will be divided equally among the children.

[1865—S. 79.]

[*] There is an implied trust in their favour.

Section 90 — Note 1 (contd.)

The law in Cochin has accordingly to be assimilated to this position. AIR 1960 Ker 1 (8, 9)= ILR (1959) Ker 665 (FB).

(6) Bequest of a vacant site along with other properties and reserving power to alter terms of the will—Subsequently testator raising building on vacant site — Held that neither the building nor the vacant site passed to the legatee, the subject-matter of the will having been converted into property of different kind and thus withdrawn from the operation of the will. (1967) 2 Andh W R 83.

Section 91 — Note 1

(1) X bequeathed an estate to trustees for a charitable object. Later on, he executed a deed of settlement about the same property for the same purpose in which he reserved a power of appointment to himself. He died without revoking the will and without an issue. Held that a will speaks from the date of the death of the testator and the will, though made before the power of appointment was created, was a good execution of the power. (1907) 31 Bom 473 (478, 479).

(2) Powers of appointment, so special a feature in English law, are not recognised in Muslim law. To add to the testamentary capacity of Muslims the right to create powers of appointment therefore, might seem to encroach on the sphere of the legislature. AIR 1948 P C 134 (138) = 75 Ind App 62.

(3) Power of appointment is not property nor an estate—Therefore, where a will empowered K to appoint but K died without exercising that power the Estate not being vested in K would not pass to his heirs. (1964) 1 Ker L R 102.

English cases

(4) There is an onus on those who say that the residuary bequest does not operate to exercise the general power to prove the contrary intention from the will. The contrary intention need not be express but it has to be proved and that can only be proved if it can be shown to the Court as a fact that, by reason of the language of the will, or by necessary inference from the language of the will, the testator having in mind the power of appointment, did not intend to exercise it. (1957) 3 All E R 465 (466, 467).

(5) A had a power of appointment by deed or will £500 amongst all and every or such one or more exclusively of the others or other of his children. In default of appointment the sum was to be given between the children equally. A bequeathed to his son generally all the residue of his estate after payment of debts legacies etc. : Held, that as the power of appointment was not to appoint in any manner he might think proper but a 'restrictive appointment' restricted to A's children, this power did not come within S. 27, English Wills Act, and it could not be said that the power was executed by the will. (1850) 50 E R 1191 (1192).

Section 92 — Note 1

(1) Where a power of selection is in the nature of a trust cast on the donee of that power if the selection is not made, the members of the class take equally. The Court will not permit the objects of the power to suffer by negligence or conduct of donee of power but would put into the effect the intentions of the testator and thus fasten on the property a trust for their benefit. In such a situation the Court will not permit the intention of the testator to be defeated by the donee of the power not executing it. If there is uncertainty as to the objects or subject of bounty or to the mode of distribution of the property it may be regarded as a naked power, If it is a mere power it lapses if it is not executed. AIR 1959 Andh Pra 448 (453) (DB) ** (1803) 8 Ves 561 (575) = 32 E R 473.

93. Bequest to "heirs," etc., of particular person without qualifying terms. — Where a bequest is made to the "heirs" or "right heirs" or "relations" or "nearest relations" or "family" or "kindred" or "nearest of kin" or "next of kin"* of a particular person without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations

(i) A leaves his property "to my own nearest relations". The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(ii) A bequeaths 10,000 rupees "to B for his life, and, after the death of B, to my own right heirs". The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(iii) A leaves his property to B; but if B dies before him, to B's next of kin; B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(iv) A leaves 10,000 rupees "to B for his life and after his decease to the heirs of C." The legacy goes as if it had belonged to C and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

[1865—S. 80.]

[*] Means only nearest blood-relations.

Section 92 — Note 1 (contd.)

(2) In order to exercise a special power there must be a sufficient expression or indication of intention in the will or other instrument alleged to exercise it and either a reference to the power or a reference to the property subject to the power constitutes in general a sufficient indication for the purpose. 1913 Ch 510 (515).

(3) In a will, particularly one, which contains the trust "in default of and subject to any such appointment," it is justifiable to insert the words "as she shall appoint" where the clause relating to the power of appointment is imperfectly expressed in that the operative words conferring the power of selection are found to be omitted therefrom. (1955) 2 All E R 630 (631).

(4) Existence of power of appointment does not prevent the vesting of the property. The exercise of the power will divest the estate but until the power is exercised, property remains vested in those who are to take in default of appointment. (1866) 2 Eq 151 (155).

(5) Where there is power to appoint among relations so as to give the donee of the power — the right of selection — the donee of the power can appoint to any relations, but in modelling the trust to be applied in default or arising from the power being coupled with duty the class of relations may be confined to a particular set of relations and the relations who take in default of the exercise of power are those next of kin according to statute; they take as tenants-in-common but not in shares defined by statute. (1883) 24 Ch D 244 (251).

(6) A person devised his whole estate in a house to his executors and trustees upon certain trusts to pay the net balance of the income to his daughters C and J in equal moieties and after their death to the use of such of their issues as they should appoint — Such direction, limitation or appointment to affect their own respective share or moiety only, not that of the other of them : Held that the power of appointment was valid and even if invalid the gift over on failure of the exercise of that power would be upheld. (1894) 18 Bom 1 (6).

(7) By his will A directed all his property to be formed into a trust in favour of his daughter whose children were to divide the property, the trust becoming void on their birth. If his daughter had no issue she had the power to appoint any person to get the property after her death by deed or will. It was urged that the bequest was void following ruling in Tagore's case: Held, that as there was no gift over on failure to exercise the power the testator had expressed the incidents of an absolute gift instead of making an absolute gift in more simple form and omitted to specify them and hence the power of appointment to the daughter was valid. (1895) 19 Bom 647 (652, 653) (DB).

Section 93 — Synopsis

1. "Heirs" or "right heirs."
2. "Family."
3. "Without any qualifying terms."

1. "Heirs" or "right heirs." — (1) Under the English law, in a gift of real and personal estate together, the word "heirs" has one meaning as to the real estate and another meaning as to the personal estate; it means the heir-at-law in relation to the real estate and the next of kin in relation to the personal estate. (1883) 25 Ch D 212 (218, 220).

(2) Will providing that after testator's death A shall enjoy properties during her lifetime and after her death K or his heirs shall get it absolutely — K dying in 1942 testator in 1959 and A in 1956—Held, since there was prior bequest in favour of A and distribution to heirs of K was postponed during lifetime of A, ascertainment of heirs of K has to be made as on date of death of A. (1968) 81 Mad L W 587.

(3) Gift or Bequest to person in belief of his filling certain character — Gift or bequest will fail if the belief turns out to be mistaken — If gift or bequest is to a particular person, described as having a particular character it will prevail even if the person is proved not to hold that character. (1972) 1 Cut W R 589 (Pr 11).

94. Bequest to "representatives," etc., of particular person. — Where a bequest is made to the "representatives" or "legal representatives" or "personal representatives" or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it.

Illustration

A bequest is made to the "legal representateves" of A, A has died intestate and insolvent. B is his administrator B is entitled to receive the legacy, and will apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus B will pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

[1865 — S. 81.]

95. Bequest without words of limitation.°— Where property† is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

[1865 — S. 82.]

[°] Section applies to the wills of Hindus etc. — See S. 57 & Sch. III.

[†] That is property actually vested in the testator or in his power. As to annuities created by the will. see S. 173 infra.

Section 93 (contd.)

2. "Family" — (1) The word 'family' has three meanings. In one sense it means the whole household, in another sense it means everybody descended from a common ancestor. In the third sense it means his "wife" and "children." Every word which has more than one meaning has a primary meaning. the primary meaning of the word "family" being children. (1876) 3 Ch D 672 (674). (Held that 'my said family' in a will meant children of a testator in a will.)

[See also (1870) 9 Eq 622 (624). "(Family" would not strictly speaking be confined to statutory next of kin.)]

(2) The word "family" in the English authorities upon English wills is generally construed to mean children. But if the English rule is applied to the construction of the word 'family' in a Hindu will it would defeat the intention of the testator. (1900) 4 Cal W N 671 (673) (DB).

(3) if the words "members of my family" used by a testator in will, mean the members of the testator's family at the date of his death there is nothing that can be urged against the validity of the bequest but the word 'family' is elastic and capable of different interpretations and where a house is provided in a will on trust so as to be available to the male or female members of the testator's family it was held that there was no reason why the definition should be extended to include people other than those existing when the testator died. AIR 1920 P C 27 (28).

3. "Without any qualifying terms." — (1) The words "without any qualifying terms" in the section refer to the heirs and not to the bequest. AIR 1919 Sind 4 (6) = 14 Sind L R 203. (Dictum in 7 Bom L R 205 held obiter and Dissented from.)

[But see (1905) 7 Bom L R 207 (212).]

Section 95 — Synopsis

1. Scope.
2. Bequests conferring absolute estates.
3. Bequests conferring restricted interest.
4. Bequests to Hindu females.

1. Scope.—(1) This section applies to Hindus. (1913) 24 Mad L J 418 (422) (DB).

(2) For determining the nature of the estate conferred by a testator on the donee the Court must ascertain his intentions from the language employed by him and also keeping in view his surrounding circumstances. In other words it should ascertain his wishes by putting itself so to say, in his armchair. AIR 1953 SC 304 (305)=1953 S C R 848.

(3) Where the two clauses in a will provide for different circumstances they need not be read together and construed so as to reconcile their meaning. (1898) 22 Bom 833 (841)=25 Ind App 126 (P C).

(4) The use of the word "absolutely" in a will as defining the amount of the estate which is given under it must be subject to any executory limitation or any other valid limitation or exception which may be found engrafted on that estate in fee simple. (1905) 1905 App Cas 84 (90, 91).

2. Bequests conferring absolute estates. — (1) The word "absolute estate" (Malik Kamil) and "generation after generation" (Naslan bad naslan) used with reference to estate conferred under a will no doubt are descriptive of a heritable and alienable estate in the donee and they connote full proprietary rights unless there is something in the context or in the surrounding circumstances which indicate that absolute rights were not intended to be conferred. But where the dominant intention of the testator was to make provision not for the donee alone but for the benefit of his heirs and successors "generation after generation," the expression "heirs" in the context will mean the donee's heirs determined according to the general law of inheritance. AIR 1953 SC 7 (9, 10)=1953 S C R 232.

(2) There is no presumption that the intention of a Hindu in making a will in favour of his wife is only to give her a widow's estate and hence such a will has to be construed untrammelled by any such notion. AIR 1951 Kutch 33 (34, 35).

(3) The word "malik" used in will is not a word of art — It generally confers absolute title

Section 95 — Note 2 (contd.)
but may in context confer only life estate. AIR 1955 N U C (All) 2774. (Held that the will in question conferred only a life estate on the daughter in spite of the use of the words "malik" and "mutsariff mali khana".)

(3A) A bequest to a woman as "malik" imports a full proprietary right unless there is something in the context to qualify it. AIR 1954 All 715 (715).

(4) Where a testator provided by his will that his wife should become the "malik", that is the owner, of his estate after his death with full power to alienate including the power to dispose of the property in any way, and further directed that after his death his daughters would be his heirs with equal rights to his property. Held, that reading the will as a whole the paramount intention of the testator was to confer an absolute interest on his wife and that the directions concerning the daughters, being inconsistent with the absolute estate, was void. AIR 1952 Nag 327 (328, 330) = 1953 Nag L J 22 (DB).

(5) Bequest conferring absolute estate on daughter — Property after her death directed to go to other named persons but not to heirs of daughter — Absolute estate held not affected by subsequent words. AIR 1955 N U C (Mad) 3156.

(6) Where the testator bequeathed his movable and immoveable properties to his mother together with the rights of alienation by sale, gift, etc., the will must be held to have conferred an absolute interest on the mother and the subsequent provisions in the will for division of the properties did not cut down her absolute interest to a limited one and were void. AIR 1961 Orissa 49 (53) = 1LR (1961) Cut 96 (DB).

(7) A died leaving a will bequeathing his property to P. The will recited that after A's death entire property will vest in P and that P shall be "my heir and successor". "The said heir shall after he has inherited me be bound to abide by the following terms," and then the will provided certain conditions - Held that the will created an absolute estate of inheritance in P and the various clauses that followed the main provisions were to come into operation after P had so inherited; they must, therefore, be regarded as an attempt to impose repugnant conditions upon the estate so created and were, therefore, void. AIR 1929 P C 283 (286) = 56 Ind App 372 = 4 Luck 483.

(8) The will of a Hindu testator ran as follows: . . . . . "I have bequeathed to my son P the right to all my properties and moneys, etc., and he shall solely enjoy them. If he or his son has no child, the said properties shall pass to "Subramaniaswami" at Turuchendur" — Held that the bequest to the son was unconditional and conferred on him absolute estate which was not liable to be divested at his death without issue. AIR 1950 P C 32 (33).

(9) Where according to the will the devisee was to have an interest so long as he resided in the house of the testator, his maternal grandfather - Held, that, the restriction was imposed as a condition and not as an indication that the interest created was a life estate. AIR 1916 Cal 654 (656) (DB).

(10) When a testator had made a gift by will of a certain zamindari to his wife and his son for 'their maintenance' but language of the gift clearly showed that the estate given is one of inheritance with express power to the donees of making alienation by sale or gift — Held that it was not limited to the bare right of maintenance and was the transfer of an absolute interest. (1896) 23 Cal 670 (678) = 23 Ind App 37 (PC) ** AIR 1951 Kutch 20 (21).

(11) Even if the purpose of the gift is stated to be for maintenance of the donee, it does not necessarily follow that the estate given is limited to the life of the donee if the dispositive words are clear that an absolute estate is given. AIR 1952 Nag 55 (56) = 1952 Nag L J 78.

(12) Where the will contained "I will and bequeath to my dear wife Anne in trust and for her maintenance and support during her life all property which I may die possessed" — Held that the words "for her maintenance and support" are words of description or motive and in no way cut down the estate 'during her life' which the testator in terms gave to his wife. (1908) 31 Mad 283 (306) (DB).

(13) Testator giving to his widow his real estate for life — At her death to his eldest son J for life and thereafter to "become absolute property" of J's eldest son, alternatively "to become property of my son K or of his eldest son" — Failing either to appellant — Death of J during testator's lifetime without male issue — K and his son who had predeceased him surviving widow — Held that as gift to J's eldest son was of absolute interest, alternative gift to K was also to be absolute. 1907 App Cas 494 (498).

(14) In order to show that an unlimited gift of profits is less than a gift of the corpus some evidence should be found in the context or in the circumstances affecting property. (1898) 25 Cal 816 (822) = 25 Ind App 77 (P C). (Unlimited gift of profits held heritable.)

(15) Bequest to nephews of the testator and their descendants after the death of the testator's wife — Wish also expressed by testator that the legatees and their descendants will look after his daughters — The expression of the wish by the testator does not indicate that it was the testator's intention to give only a life estate to the legatees — They take an absolute interest. AIR 1952 Mad 685 (686, 687) = (1951) 1 Mad L J 486.

(16) Disposition in favour of Hindu widow entitling her to enjoy properties throughout her life and thereafter permitting her to dedicate to any charity — Held, that the use of the word 'enjoy' showed intentions of conferring absolute interest and in absence of obligation to dedicate property to particular charities or creation of powers of appointment in favour of such charities conferment of only limited interest cannot be inferred. AIR 1965 Mad 519 (521, 522, 523) = 78 Mad L W 198.

(17) Where property is given to a daughter under her father's will for "choli bangdi" with the direction that she should enjoy it as owner the daughter obtains an absolute estate under the will. AIR 1952 Nag 55 (57) = 1952 Nag L J 78.

3. Bequests conferring restricted interest.— (1) Interest created whether is absolute or limited one — Will has to be considered as a whole. AIR 1970 Pat 144 (149) = I L R 48 Pat 683 (DB).

(2) Testator bequeathed his landed property among his heirs and gave one part to his wife and provided that if her son outlived mother her share should descend to him — Held in-

Section 95—Note 3 (contd.)
terest of wife was only life interest and not absolute one. (1912) 15 Ind Cas 355 (356, 357) (Low Bur).

(3) A, a Hindu talukdar of Oudh, by his will declared that his wife should have full powers but that during the lifetime of his son the minor on whose behalf she was to be the manager she should have no power to transfer without necessity any portion of his property, but the wife should have the power to mortgage property for payment of the testator's debts or Government revenue — Held that the will conferred no greater power on the wife of alienating her minor son's estate than she had under Hindu law as its manager on her minor son's behalf. (1899) 26 Cal 707 (710)=26 Ind App 97 (P C).

(4) Under a will generally providing that each of the daughters of the testator should take the property allotted to her absolutely and with full powers of alienation and also stating that issueless daughters could only enjoy the properties during their lives without power of alienation the daughter having no issue at the time of the testator's death takes only a life estate. But that life estate becomes augmented into an absolute estate by the birth of a son to her and after it has become so augmented it is not cut down by the death of that child. AIR 1958 Mad 431 (432, 433).

(5) Testator bequeathing property to Hindu widow with liberty to enjoy during her lifetime but with direction to make gift thereafter to reversioner of her choice — Held, that document creates only life estate in favour of widow. AIR 1965 Mad 519 (523) = 78 Mad L W 198 (DB).

(6) Bequest to wife and daughter-in-law for maintenance — That the will conferred only life estate because the testator clearly stated that the propery had been given for maintenance and that the wife and the daughter-in-law would not have any right of alienating property devised. AIR 1952 Punj 120 (121) = 54 Pun L R 457.

(7) Properties to be "enjoyed by daughter and after her death by her male children too as permanent and absolute huckdars" — Daughter takes life estate. AIR 1964 S C 1323 (1328)= (1964) 2 S C R 722.

4. Bequests to Hindu females. —(1) To convey an absolute estate to a Hindu female it is not necessary to expressly confer on her a power of alienation. It is enough if words of such amplitude as would convey full rights of ownership are used. AIR 1954 S C 355 (359)=(1955) 1 S C R 51**1957 M P L J 280.

(2) Grant of immovable property to Hindu female—Absence of express conferment of power of alienation does not necessarily raise a presumption as to the estate given being not an absolute estate. Question depends on the tenor of the will. 1LR (1957) Madh Pra 155 (156).

(3) Bequest to wife for life and after her death to the youngest of three daughters and her husband absolutely — Recital that as daughter and her husband were living with testator and looking after him and his wife and due to affection absolute estate was bequeathed — Daughter predeceasing widow and daughter's husband marrying again — Widow and other daughters selling property — Death of widow — Suit by daughter's husband for possession of property— Held (1) The intention of the testator was to benefit both the plaintiff and his wife his youngest daughter and the bequest being a joint one the plaintiff became entitled to the entire property irrespective of the fact whether he married a second wife or not. (2) The widow having been given only a life-estate on her death the plaintiff was the only person entitled to the property under the will the other daughters having been disinherited by the testator and no interest devolved on them on the death of the plaintiff's wife. (1964) 1 Mad L J 258.

(4) There is no presumption that a gift or bequest by a husband in favour of his wife is only of a limited estate. It all depends on the terms of the gift or will. The primary duty of the Court is to ascertain from the language of the testator what were his testamentary intentions and give effect to them. AIR 1957 Andh Pra 21 (22)**AIR 1966 Punj 262 (265)=1965 Cur L J 741.

(5) In case of a bequest to a Hindu widow there must be some words indicating an absolute gift either expressly or by implication. Where the words of the will are "the documents of the house shall be taken by two ladies" and there are no other words of inheritance or words authorising them to alienates the ladies cannot be held to have an absolute estate. (1913) 24 Mad L Jour 418 (423) (DB).

(6) The rule of law applicable to a gift of immovable property by a Hindu husband to his wife is that though a mere gift of immovable property does not carry with it the power of alienation yet when such power of alienation is given expressly or by implication she acquires an absolute power of disposal over the property and when the gift is by a will this section entitles her to the whole interest unless it appears from the will that only a restricted interest was intended to be given. (1901) 5 Cal W N 300 (303) (DB).

[See also AIR 1920 Oudh 37 (38).]

(7) The use of the words "enjoy at her pleasure with absolute rights and powers of disposition by way of gift, sale etc., etc." in a will made by a Hindu in favour of his wife clearly points out that the estate conferred on his wife is nothing short of an absolute and unqualified estate. A I R 1954 Mad 136 (139)=ILR (1953) Mad 1235 (DB).

(8) A Hindu testator gave certain property to his two younger daughters in equal shares and the remainder to his elder daughter and her son. The son was to pay the Government assessment and subject to the direction of his mother was to enjoy the land but not in any way to alienate the right to property. Held that the intention was to grant life estate to daughter with remainder to her son whose interest was subordinate to his mother. As mother's interest was not absolute the property passed to her son's heirs. (1898) 21 Mad 425 (428) (DB).

(9) In the case of a will by a hindu the terms of which are of uncertain import resort may be had to the presumed intention of a Hindu testator, the circumstances of the family of the testator, the claims of various relations upon his bounty and similar matters to determine whether the testator intended to convey a widow's interest or an absolute interest. AIR 1957 Andh Pra 21 (22, 23).

96. Bequest in alternative.* — Where a property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations

(i) A bequest is made to A or to B. A survives the testator. B takes nothing.

(ii) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(iii) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(iv) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(v) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.†

(vi) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(vii) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequeast to the heirs of B takes effect.

[1865 — S. 83.]

[*] Section applies to the wills of Hindus etc.—See S. 57 & Sch. III.

[†] 'Or' in this illustration is construed as substitutional and there is no lapse.

Section 95 — Note 4 (contd.)

(10) Bequest to Hindu female — Wife given right to gift or sell and to 'R' rights of Malik after her death — Wife gets absolute estate. AIR 1965 Orissa 54 (57, 58, 59) = ILR (1964) Cut 479.

(11) X made a gift of property to his wife in the following terms:—"She will, like myself, now be the owner in possession and I will have no concern with the property. She has the power to alienate by sale or mortgage but she will not be entitled to make a gift". On the same day X made a will of his other properties in favour of his wife and daughter-in-law to be taken equally by them, The words used in the will were that after his death his wife and daughter-in-law "shall be "malik" and "qabiz" and they will be entitled to the income of the property during their lifetime but will not have the power of making an alienation, and after their death, whoever is my lawful heir will be entitled to all my property."

Held, that intention of X was to give a full estate and not a widow's estate by means of the gift that be made.

Held, further the will conferred only a life estate. AIR 1952 Punj 120 (121) = 54 Pun L R 457.

Section 96 — Note 1

(1) Will providing that estate should go to testator's daughter during her lifetime and after death to her sons or sons' children as would be alive; Held, the word "or" could not be read as "and" and after the daughter's death the property would go to her sons or if sons were not living, to her sons' children. AIR 1941 Mad 245 (246) (DB).

(2) Bequest of life interest in favour of sons— Residue devised in favour of male issue of sons; such issue failing; to female issue and that again failing in favour of the grand-daughers by his daughters — No grandchildren by son at the time of testator's death — Two daughters of the daughter and not the sons are entitled to the residue. (1905) 28 Mad 386 (389) (DB).

(3) A bequest was made to two ladies for life and after the death of the survivor of them to male issue of one J and in default of such male issue to any person or persons J might by his deed appoint. J had no male issue and by his will appointed his daughters A and B to the estate. B was born after the death of the testator. It was held that the alternate gift to persons to be appointed by J was valid but as B was not alive at the death of the testator it was invalid in regard to B. (1892) 16 Bom 492 (497, 499) (DB). (Appeal from 15 Bom 326).

(4) A gave certain pecuniary legacies to children of his deceased son B and gave the residue to his other children excepting B and added that if such child died before A leaving his child or children at the time of A's death, such child or children would take the share of his parent. Question was whether B's children could share the residue. It was held that they could not as the gift in favour of other grand children was a substitutional gift and not an independent gift in favour of all the grandchildren. 1907 App Cas 225 (228).

(5) Alternative gift in favour of a class of persons to be selected by person having power to appoint — In default of appointment all such persons take as tenants-in-common in equal shares. (1883) 24 Ch D 244 (252).

(6) Wife given right to gift or sell and to 'R' rights of Malik after her death—Held, presumption of life estate cannot be drawn and right to gift or sell being incidents of ownership wife gets absolute estate — Held, further bequest to R was not a case of subsequent devise. AIR 1965 Orissa 54 (57, 58, 59) = ILR (1964) Cut 479.

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97. Effect of words describing a class added to bequest to person.*— Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrarions

(i) A bequest is made—

to A and his children,
to A and his children by his present wife,
to A and his heirs,
to A and the heirs of his body,
to A and the heirs male of his body.
to A and the heirs female of his body,
to A and his issue.
to A and his family,
to A and his descendants,
to A and his representatives.
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(ii) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(iii) A bequest is made to A for life and after his death to his issue. At the death of A the property belongs in equal shares to all persons who then answer the description of issue of A.

[1865 — S. 84.]

[*] This section does not apply to Hindus etc. It embodies an artificial rule of construction taken from English law as to moveable or personal property.

Section 97 — Note 1

(1) The construction which the English Courts have put upon bequest to "A and his issue" as creating an estate in tail should not be adopted in the construction of wills of Hindu testator. AIR 1954 Mad 19 (36) (DB).

(2) The use of the words "male heirs" in a will do not import any limitation. Such an expression would be rejected as having no effect in the absence of any indication of contrary intention. There is no reason why a different effect should be given to that expression in a deed of family settlement. A I R 1925 P C 306 (306).

[See also (1913) 35 All 211 (223) = 40 Ind App 105 (PC).]

(3) A house was by a will devised in the first instance to the testator's wife with a limited interest; then it was to devolve after the death of the wife on the testator's daughter and her children: Held the devise directly falls within the first illustration of Illus. (i) and thedaughtre takes an absolute interest. A I R 1925 Oudh 24 (26) (DB).

(4) The provision in a will that the legatee and his descendants will enjoy the property and look after the daughters of the testator cannot mean that the legatee gets only a life estate under the will while his children get a vested remainder under the provision. The legatee gets an absolute estate under that will. AIR 1952 Mad 685 (687).

(5) Where a property was bequeathed to B to be "absolutely owned by B and his descendants" it was held that the intention of the will was to give the property jointly to B and his descendants and therefore B took jointly with the descendants. AIR 1955 N U C (Ajmer) 2620.

(6) This section does not apply directly to wills by Hindus but as a general principle of interpretation of wills the rule laid down by the section can equally be applied to a will by a Hindu, though if the clear intention of the testator appeared otherwise it is inapplicable. AIR 1944 Mad 22 (23)*AIR 1954 Andh 2 (4)* AIR 1952 Mad 685 (688)*A I R 1936 Bom 459 (461)=ILR (1937) Bom 679.

(7) Section 97 does not appear in the chapter which deals with annuities but the language is very wide. The words "where property is bequeathed to a person" in the section may be extended to embrace the giving of a right to receive periodical payments. ILR (1947) 1 Cal 304 (307).

(8) Bequest in favour of one V — Mention in will, of issues of V for supporting wife of testator —Held, principle of illustration (i) to Section 97 applied —Bequest was in favour of V alone. AIR 1963 Andh-Pra 476 = (1963) 1 Andh L T 312 (DB).

(9) A person can make a gift or bequest in favour of persons constituting a tavazhi and the property to them will be taken by them and enjoyed as tavazhi property. The donees or the legatees are not constituted members of a tavazhi because of the gift or the bequest. The gift or bequest is made to members who actually constitute a tavazhi. AIR 1955 Mad 594 (594)=(1955) 2 Mad L J 161 (DB).

(10) Principle of section applies to settlements — Son and his male heirs to take certain property Held, son took a moiety in absolute right. A I R 1964 Mad 80 (82)=(1964) 1 Mad L J 352.

(11) Where the language of the will was clear that the testator granted absolute and unlimited estate to his wife, but in the latter part of the will be expressed the hope that his wife will bequeath the properties by will to his daughter, it was held that the daughter not being the direct object of the gift, the will did not create

98. Bequest to class of persons under general description only.*— Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

[1865 — S. 85.] [Cf. Ss. 111, 115 and 121 infra.]

[*] Section applies to Hindus etc. — See S. 57 & Sch. III.

99. Construction of terms. — In a will —

(a) the word "children" applies only to lineal descendants* in the first degree of the person whose "children" are spoken of;

(b) the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "grandchildren" are spoken of;

(c) the words "nephews" and "nieces" apply only to children of brothers or sisters;

Section 97—Note 1 (contd.)

only a life estate for wife and the bequest was absolute. (1969) 82 Mad L W 102 (111).

(12) Neither the provisions of S. 97 nor the principles contained therein will have application where a line of succession to the trusteeship is indicated in the will. (1971) 84 Mad L W 40 (42).

Section 98 — Note 1

(1) A gift to a class implies an intention to benefit those who constitute the class and to exclude all others; but a gift to individuals described by their several names and descriptions though they may together constitute a class, implies an intention to benefit the individuals named. In a gift to a class you look to the description and inquire what individuals answer to it; and those who do answer to it are the legatees described. But if the parties to whom the legacy is given be not described as a class but by their individual names and additions, though together constituting a class, those who may constitute the class at any particular time may not, in any respect, correspond with the dercription of the individuals named as legatees. (1838) 40 E R 1091 (1095)=3 My and C 638.

(2) A number of persons are popularly said to form a class when they can be designated by some general name, as 'children', grand-children, "nephews;" but in legal language the question whether a gift is one to a class depends not upon these considerations, but upon the mode of gift itself. (1891) 15 Bom 543 (548) (DB).

(3) When the gift is to a number of persons who are united or connected by some common tie and you can see that the testator was looking to the body as a whole rather than to the members constituting the body of individuals and so you can see that he intended that if one or more of that body died in his lifetime the survivors should take the gift between them there is nothing to prevent the Courts giving effect to the wishes of the testator. 1901 App Cas 187 (190, 191).

(4) Gift to a class fails when the class cannot be ascertained within the period allowed by the rule against perpetuities. But when it can be ascertained within that period the incapacity of some of the members does not make gift invalid, as regards the other members. (1911) 38 Cal 188 (200) (DB).

(5) The testator gave his residuary estate on the usual administration trusts and gave the net proceeds as follows: "Upon trust for such of them my said wife G my stepson S and my son D as shall survive me and attain the age of twenty one years and if more than one in equal shares as tenants in common absolutely and if one only then the whole to that one. The testator was feloniously killed by his wife G who was convicted of manslaughter. Thus G was debarred from taking any benefit under the will, S and D both survived the testator. S attained the age of 21. Held that the residuary gift was a gift to a group and was a class gift. Therefore S and D, who were residuary legatees at the time of the testator's death, were entitled to the residuary estate in equal shares but subject as regards D to his attaining the age of 21. (1957) 2 All E R 98 (101).

(6) There is no restriction in Indian law to a corporation taking property under a will. Consequently a bequest in favour of Radha Swami Sat Sangh Sabha, Dayal Bagh, a body corporate under Societies Registration Act, is valid. AIR 1948 Oudh 160 (161)=23 Luck 111.

(7) Where an estate is transferred by will to the next successor at law and the testator intends that the sussessor should take the estate in the same manner and with the same rights and status as he would have taken if there were no will, then neither the character of the estate nor the rights and status of the successor are affected and remain unaltered. The rule applies to the case of an adopted son whose adoption though made subsequent to the death of the testator; relates back to the death of the testator or prior thereto provided that the will was made in contemplation of the adoption.

What applies to a will, applies equally to the case of a gift whether made directly or through the medium of a trust. AIR 1952 All 564 (572)=1951 All L J 218 (DB).

(8) The principle applicable to a gift to a group of persons governed by Maramukatayam usage is equally applicable to a testamentary disposition made by a person governed by the aliyasanthana law. ILR (1967) Mys 848 (856).

Section 99 — Note 1

(1) Section 99 (g) is not applicable to wills of Hindus. AIR 1939 Cal 637 (638).

(2) A bequest in favour of a person and his "santan santati" amounts to a limited bequest to the donee and his children should he have any children, and to the children's children and so on. Any expression used in the earlier part

(d) the words "cousins", or "first cousins" or "cousins german", apply only to children of brothers or of sisters of the father or mother of the person whose "cousins", or "first cousins" or "cousins-german", are spoken of;

(e) the words "first cousins once removed" apply only to children of cousins-german, or to cousins german of a parent of the person whose "first cousins once removed" are spoken of;

(f) the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

(g) the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of;

(h) words expressive of collateral relationship apply alike to relatives of full and of half blood; and

(i) all words expressive of relationship apply to a child in the womb who is afterwards born alive.

[1865—S. 86.]

[*] By any marriage, unless the will shows a clear intention to exclude children by a particular marriage.

100. Words expressing relationship denote only legitimate relatives or failing such relatives reputed legitimate. — In the absence of any intimation to the contrary in a will, the word "child", the word "son", the word "daughter", or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired at the date of the will, the reputation of being such relative.*

Section 99 — Note 1 (contd.)

of the will indicating a bequest in favour of heirs in general will be controlled by the disposition made to the above effect in the concluding clause of the will. AIR 1957 Cal 150 (150, 151) (DB).

English case

(3) Where a testatrix in bequeathing her property to her "grandchildren" used that phrase in a sense, which although peculiar to herself she had indicated in the will, it was held that it was impossible to exclude from that class a person who not only fell within that class according to that peculiar sense but whom she had also recognised as her grandchild in the will itself. (1949) 2 All E R 551 (553, 554).

Section 100 — Note 1

(1) This Act contemplates only legal relations and an illegitimate child being in the eye of law "filiae nullius" its claim to succeed as a relation must be rejected. (1906) 30 Bom 500 (505).

(2) The term "children" in will prima facie means legitimate children and if there is nothing more in the will the circumstance that the person whose children are referred to has illegitimate children will not entitle the illegitimate children to take. This prima facie interpretation, however, is departed from in a case where there is on the face of the will, an expression of the testator's intention to use the word "children" as including illegitimate children. (1887) 35 Ch D 728 (732) * (1886) 31 Ch D 511 (517, 520) * AIR 1914 Cal 222 (223) (DB).

[See also (1902) 2 Ch 542 (545).]

(3) The above rule is also departed from where it is impossible from the circumstances that any legitimate child could take. (1909) 1 Ch 796 (800).

(4) A man cannot provide for the illegitimate children either of himself or of another man by any reference that involves an enquiry as to their paternity. The law allows no criterion of paternity but marriage. The law does not forbid a gift to illegitimate children if the Court could make out from the will that the testator means that all children of the woman born during his cohabitation with her should be considered, or reputed to be his. (1886) 31 Ch D 542 (553).

(5) There is a great distinction to be drawn between gifts whether by deed or by will, by a man in favour of illegitimate child or children and gifts by the mother of an illegitimate child or children. In the former case there is an immoral consideration but the argument cannot apply in the case of gifts by the mother. The illegitimate child when the mother wants to benefit it by a will, can take the bequest as there is nothing in the policy of law to affect this gift to her own child. 1905 P D 137 (139).

(6) The rule as to interpretation of the word "children" equally applies to the meaning of the relation. (1894) 3 Ch 565 (572) ** 1891 App Cas 304 (305).

(7) Prima facie a gift to a testator's niece refers to his legitimate niece, and supposing the only person who could take under the gift was a grandniece of the testator's wife, that means a legitimate grandniece of his wife and not an illegitimate grandniece of his wife. There is thus no latent ambiguity and no evidence can be let in to show that the illegitimate grandniece was intended by the testator. (1894) 2 Ch 83 (87).

(8) Gift to all my nephews and nieces then living — No possibility of lawful nephews and nieces competing with natural nephews and

Illustrations

(i) A having three children, B, C and D, of whom B and C are legitimate and D is illegitimate, leaves his property to be equally divided among "my children". The property belongs to B and C in equal shares, to the exclusion of D.

(ii) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(iii) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "my said children,'. B will take a share in the legacy along with the legitimate children.

(iv) A leaves a legacy to "the children of B". B is dead and has left none but illegitimate children. All those who had at the date of the will acquired the reputation of being the children of B are objects of the gift.

(v) A bequeaths a legacy to "the children of B". B never had any legitimate child, C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(vi) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired at the date of the will the reputation of being the child of A by the woman designated. B takes the legacy.

(vii) A makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.

(viii) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is void.

[1865—S. 87.]

[*] This apparently means "such legitimate relatives"; but illustrations (iv), (v) and (vi) play a different tune.

101. Rules of construction where will purports to make two bequests to same person.*—Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall have effect in determining the construction to be put upon the will :—

(a) If the same specific thing is bequeathed twice to the same legatee in the same will or in the will and again in the codicil, he is entitled to receive that specific thing only.

(b) Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

(c) Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

(d) Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Section 100 — Note 1 (contd.)
nieces — Expression held included sons and daughters of testator's natural sister. (1906) 2 Ch 316 (320).

Section 101 — Note 1

(1) The common case where the legacies have not been held to be accumulative is where the same corpus is given twice to the same person, the second legacy nil operatur, because it cannot be given more than once. Where the same quantity has been given, and the same cause, or no additional reason assigned for a repetition of the gift the Court has inferred the testator's intention to be the same, and rejected the accumulation; but where the same quantity is given, with any additional cause assigned for it, or any implication to show that the testator meant that the same thing, prima facie, should accumulate, the Court has decided in favour of the accumulation. (1794) 28 E R 1196 (1196) = 1 Bro C C 390. (Additional cause or mark of favour mentioned in codicil — Gift held accumulative.)

(2) Where a testatrix by her will bequeathed £350 to D and by a codicil to the said will she bequeathed to D the sum of £1000 "thus increasing the sum of £350 as mentioned in my said will, in appreciation of his valuable services and advice over a period of over twenty years": Held, that there being nothing to displace the presumption that legacies given by different instruments are prima facie cumulative, D was entitled to both the legacies. (1957) 3 All E R 52 (54).

Explanation.—In clauses (a) to (d) of this section, the word "will" does not include a codicil.

Illustrations

(i) A, having ten shares, and no more, in the Imperial Bank of India, made his will, which contains near its commencement the words "I bequeath my ten shares in the Imperial Bank of India to B". After other bequests, the will concludes with the words "and I bequeath my ten shares in the Imperial Bank of India to B". B is entitled simply to receive A's ten shares in the Imperial Bank of India.

(ii) A, having one diamond ring, which was given him by B, bequeaths to C the diamond ring which was given by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(iii) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards in the same will repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(iv) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards in the same will bequeaths to B the sum of 6,000 rupees. B is entitled to receive 11,000 rupees.

(v) A, by his will, bequeaths to B 5,000 rupees and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(vi) A, by one codicil to his will, bequeaths to B 5,000 rupees and by another codicil bequeaths to him, 6,000 rupees. B is entitled to receive 11,000 rupees.

(vii) A, by his will, bequeaths "500 rupees to B because she was my nurse", and in another part of the will bequeaths 500 rupees to B "because she went to England with my children". B is entitled to receive 1,000 rupees.

(viii) A, by his will, bequeaths to B the sum of 5,000 rupees and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(ix) A, by his will, bequeaths to B the sum of 5,000 rupees and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

[1865—S. 88.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

102. Constitution of residuary legatee.* — A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Section 102 — Note 1

(1) The illustrations appended to S. 102 make it perfectly clear that in order to constitute a person a residuary legatee it is not necessary that there should be other legatees besides him. It is enough if he is given residue of the estate after the debts and funeral expenses are paid off. ILR (1948) 1 Cal 300 (304) (DB).

(2) A will conveyed the estate to A after two life estates, one in favour of the widow and another in favour of the widowed daughter, had come to an end. The will also directed A to perform the funeral rites and sradhs of the testator and the testator's widow as well as to pay the debts in a certain manner indicated therein. The entire estate of the testator did not devolve on the testator's death on A but was subject to certain reservations made in the will: Held, that A merely got the rest and residue of the estate left after the two life estates had ceased and after the provisions contained in the will for payment of debts and sradh expenses had been complied with and was therefore a residuary legatee. AIR 1953 Cal 471 (474) = ILR (1955) 1 Cal 55 (DB).

(3) No particular form of expression is needed to constitute a residuary legatee. If on a reading of the will it becomes sufficiently clear that the testator intended to dispose of his entire estate and that after creating bequests in favour of the persons named in the will the rest of the estate is to vest in a person then in existence or to come into existence later, the position emerges in law that such a person is the residuary legatee. AIR 1954 Nag 277 (278, 279) = ILR (1954) Nag 315 (DB).

(4) This Act does not contain any formal definition of the expression "residuary legatee" but its meaning is evident from Ss. 102 and 103 of that Act. A residuary legatee is the person designated by the testator as one who will take the residue, surplus of his property and residuary bequest implies that the legatee is entitled to all property belonging to the testator at the time of his death so that whatever is not effectively disposed of goes to the residuary legatee. AIR 1935 Nag 239 (240) = 31 Nag L R (Sup) 30.

(5) The very essence of a residuary clause is that its terms should be such as to carry with the bequest of all the enumerated items, if any, all items of property belonging to the deceased not mentioned in the will. Therefore where there were no words bequeathing to a person any immovable property excepting those mentioned in the will he is not a residuary legatee. AIR 1925 Mad 418 (420) (DB).

(6) Prima facie, the words "I give all my personal property and effects" were sufficient to constitute a person a residuary legatee of the personality of the deceased within S. 102 and hence prima facie under S. 103 the person becomes entitled to all the personal property belonging to the testatrix at the time of her death of which she had not made any other testamentary disposition which was capable of taking effect. AIR 1935 Rang 71 (71) = 12 Rang 705 (DB).

(7) Devise of specific immovable property to A for life only — No direction as to what should

Illustrations

(i) A makes her will, consisting of several testamentary papers, in one of which are contained the following words :—"I think there will be something left, after all funeral expenses, etc., to give to B, now at school towards equipping him to any profession he may hereafter be appointed to". B is constituted residuary legatee.

(ii) A makes his will, with the following passage at the end of it :—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby, desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(iii) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

[1865—S. 89.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

103. Property to which residuary legatee entitled.* — Under a residuary bequest, the legatee is entitled to all property† belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.‡

Illustration

A by his will bequeaths certain legacies, of which one is void under section 118, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will A purchases a zamindari which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

[1865—S. 90.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

[†] Whether moveable or immoveable, personal or real.

[‡] Whether by reason of lapse, remoteness, or otherwise. See however, S. 108 infra.

Section 102—Note 1 (contd.)

happen after determination of A's interest — General direction to executors to sell all the residue of his moveable and immovable property and to make over the proceeds to a university : Held, reversion after determination of A's life interest passes to university under the residuary devise, (1904) 31 Cal 166 (169).

(8) A testator bequeathed "all the real and personal estate" to his trustees for sale and conversion and out of the proceeds to pay "my debts" and hold the residue thereof in trust for certain residuary legatees. It was held that notwithstanding the absence of the words "rest and residue" the general devise and bequest of the real and personal estate as a mixed fund in one mass was clearly residuary. (1909) 1 Ch 791 (795).

(9) Held that the will contained residuary bequest and intention of testator was to make devise of his residuary estate in favour of plaintiff and plaintiff was entitled to legacy which lapsed on account of death of other legatee before testator. 1966 Ker L T 739.

(10) Where the will gave specific legacies to particular relations and the rest of the properties including rice mill, cash and other movables to one S, the latter would become residuary legatee. The mention of specific properties as part of residue would not make it a specific legacy. A I R 1963 Mad 405 (408) = (1963) 2 Mad L J 261 (DB).

Section 103 — Note 1

(1) The statement of law that the residuary legatee must be vested with the surplus and residue of the property left by the testator at his death underlies Ss. 102 and 103. AIR 1953 Cal 471 (474)=ILR (1955) 1 Cal 55 (DB).

(2) The residuary gift carries every lapsed legacy and any legacy which on any ground fails to take effect — But this is subject to other rule that if the testator has shown any intention with regard to the excepted property inconsistent with its ever falling again into residue effect must be given to that intention. A I R 1935 Rang 71 (71) = 12 Rang 705 (DB) ** (1902) 6 Cal W N 321 (325) ** AIR 1935 Nag 239 (240) =31 Nag L R (Sup) 30.

[See also (1861) 8 Moo Ind App 66 (83) (PC).]

(3) Where the testator has manifested a general charitable intention this should not fail to be carried out merely because the executors are all dead and the particular land, on which the testator desired the dispensary to be erected, is not available for the purpose. (1909) 36 Cal 261 (265).

(4) The residuary estate should be construed to include such portions of the enumerated estate as were not specifically given but it does not apply to property unknown to the testator. AIR 1934 Cal 356 (361)=60 Cal 1406(DB) ** AIR 1916 Mad 17 (18)=38 Mad 1096.

(5) Certain items to remain as tarwad — Properties omitted, to go to certain persons — Attempt to create property on analogy of tarwad, held, invalid and items fell into residue. A I R 1940 Mad 785 (787) (DB).

(6) J, a Hindu died on 21-9-1920, having executed a will the previous day. To his widow and to his widowed daughters-in-law, viz., L and S he left only a life estate each. J, then provided that whatever property would be left after providing for the legacies made in his will would go to the son to be adopted in dattaka form by S. Accordingly D was adopted in 1924. D died in 1942 and L died in 1948. In a suit brought by the widow of D against S, the adoptive mother, S contended that D could not be treated in law as the residuary legatee because

104. Time of vesting legacy in general terms.* — If a legacy is given in general terms, without specifying the time when it is to be paid,† the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

[1865—S. 91.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

[†] Or delivered. The section applies to bequests of land and of every kind of moveable property. As to vesting where payment or delivery is postponed or the legacies are contingent, see Chap. VIII infra.

105. In what case legacy lapses.* — (1) If the legatee† does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the will that the testator intended that it should go to some other person.‡

Section 103 — Note 1 *(contd.)*

he had predeceased L: Held, that the date of the death of L was wholly irrelevant in considering the question whether D in law could be treated as the residuary legatee. The date of the death of L would be relevant only if it were held that she had a woman's estate in the property bequeathed to her by J. But as L had only a life interest the necessary legal consequence was that the vested remainder was either in J or in D. A I R 1954 Nag 277 (279)= ILR (1954) Nag 315 (DB).

(7) Residuary legatee cannot claim any particular property of the testator before his residue is ascertained — Section 103 is controlled by S. 366. ILR (1960) 2 Cal 282 (DB).

(8) Held that the intention of testator was to make devise of his residuary estate in favour of plaintiff and plaintiff was entitled to legacy which lapsed on account of death of other legatee before testator. 1966 Ker L T 739.

Section 104—Note 1

(1) Probate granted to executor—Simultaneous agreement recorded between beneficiaries to have properties disposed of by the executor not in complete accordance with the terms of will—Executor agreeing to distribute according to the terms of agreement — Held executor holds property under the will and not as a trustee and the heir of residuary legatee who has not received his share can invoke the aid of S. 104. A I R 1933 Cal 841 (843)=60 Cal 1135 (DB).

(2) A person who is given by will definite share after expiration of life estate takes vested interest in such share and it is transmissible to his heirs. (1928) 109 Ind Cas 654 (654) (Lah).

(3) A bequest unless the testator intended otherwise, as in the case of a contingent bequest, becomes vested in interest in the devisee or legatee from the date of the testator's death although he may not be entitled to receive what has been bequeathed to him except in due course of administration. (1912) 22 Mad L Jour 228 (229) (DB).

(4) The estate vested under this section is not full or absolute and until the assent of the executor is given the legatee has only an inchoate right to the legacy. A I R 1916 Mad 422 (423, 424)=38 Mad 474 (DB) ** 1961 M P L J 609 (614, 615) (DB).

(5) A will directed that in the event of any of his legatees dying during his lifetime or any time thereafter "prior to the division" of the proceeds from the sale of his estate as directed in earlier part of the will, leaving lawful issue, such issue would be entitled to the share of the deceased parent. One legatee died after the testator's death but before the said division took place and left a lawful issue. It was held that the interest of the deceased legatee did in law vest in him at the death of the testator but he having died prior to the division of the estate it was divested and the gift over took effect in favour of his issue. (1884) 6 All 583 (597) (DB).

(6) The testator, a Hindu, died leaving him surviving a widow R and a married daughter L who had a number of children. They were all alive when the testator died. By his will the testator gave the following directions:—"After my lifetime, you, the aforesaid R my wife, shall till your lifetime enjoy the aforesaid entire properties, the outstandings due to me, the debts payable by me and our daughter and wife of A (the plaintiff) and her heirs shall enjoy them with absolute rights and powers of alienation such as gift, exchange and sale from son to grandson and so on for generations. As regards the payment of maintenance to be made to C, wife of my late son, my wife R shall pay the same as she pleases and obtain a release deed". L died during the lifetime of R. None of her children survived her. Held that the daughter got under this will a vested interest in the testator's properties on his death. A I R 1953 S C 304 (306) = 1953 S C R 848.

(7) There is no doubt that in the case of a specific bequest the beneficiary acquires title by relation back when the executor gives his assent and the doctrine of relation back is not applicable to the bequest of a residue as the residue comes into existence when the administration is complete. 1961 M P L J 609 (614) (DB).

(8) Absolute bequest in favour of daughter after termination of life interest of wife — Daughter takes vested interest — Daughter predeceasing wife — After wife's death property passes to daughter's heirs. A I R 1962 Andh-Pra 54 (57, 58) (DB).

Section 105—Note 1

(1) Section 105 enacts that a legacy shall lapse and form part of the residue of the testator's property if the legatee does not survive the testator except where it appears by the will that the testator intended that the legacy shall on the legatee not surviving him go to some

(2) In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.§

Illustrations

(i) The testator bequeaths to B "500 rupees which B owes me." B dies before the testator: the legacy lapses.

(ii) A bequest is made to A and his children.*† A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(iii) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(iv) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(v) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(vi) The testator and the legatee perished in the same ship-wreck. There is no evidence to show which died first. The legacy lapses.*‡

[1865—S. 92.]

[*] This section applies to Hindus etc.—See S, 57 & Sch. III.

[†] Whether of moveable or immoveable property, or whether under a will or as appointee under a testamentary power.

[‡] A mere declaration that the gift will not lapse is not enough.

[§] This includes the donee of a testamentary power.

[*†] In application to Hindus etc., this term includes adopted children.

[*‡] This indicates that the doctrine of lapse applies to contigent bequests.

Section 105 — Note 1 *(contd.)*

other person. It cannot be said that the intention of the testator that a legacy shall not lapse may be given effect to only if the testator expressly directs that if the legatee dies during his lifetime the legacy shall go to some other person, and that intention to exclude lapse cannot be inferred. Section 105 (1) does not say, nor does it imply, that the testator must have expressly envisaged the possibility of lapse in consequence of the legatee dying during his lifetime and must have made a provision for that contingency. AIR 1969 S C 1355 (1358)=(1969) 2 S C C 91. (Bequest of properties for two purposes, namely, celebrating marriage of S and constructing a temple—No allocation of amounts separately — Death of S during lifetime of testator — Held. that there was no joint bequest and it should be presumed that the fund was to be utilised in equal moieties for two puposes— Failure of one of the purposes by death of S before testator's death would result in a moiety of the amount devised falling into the residue.) AIR 1952 Bom 203 (208)=I L R (1952) Bom 825.

(2) Joint bequest by A and B in favour of daughters of B subject to defeasance on sons being born to B before his death — Son born to B before his death — Upon his death, there is no valid bequest to daughters but there is intestacy and Hindu Succession Act applied—Son would not take under the will because he was unborn at the death of A. A I R 1970 S C 1759 (1764)= (1970) 2 S C R 471.

(3) In order to prevent a legacy from lapsing a testator must in clear words exclude lapse and must clearly indicate who is to take in case the legatee dies before the testator. AIR 1940 Lah 318 (319) = ILR (1940) Lah 583 (DB). (Bequest to wife and three daughters in four equal shares —Wife dying before testator — No indication as to wife's share in such circumstances — Bequest to wife lapses and passes to son.)

(4) Indication in the will that the testator intended that the legacy should not lapse or should not fall in the residue takes the case out of the scope of S. 105. A I R 1952 Bom 203 (206) =ILR (1952) Bom 825.

(5) Where the will provided that if any nephew of the testatrix should predecease her, his descendants should take the place of the deceased and where each clause showed the anxiety of the testatrix that in the event of the legatee dying during her lifetime his Santhathies should take the property, the terms of the second part of S. 105 (1) applied to the case and there was nothing to attract the first part of S. 105 (1) since there was no lapse. AIR 1954 Andh 2 (4).

(6) Universality is not an essential ingredient of a residuary devise. There can be a general residue and a particular residue under the same will. AIR 1952 Bom 203 (206)=ILR (1952) Bom 825.

(7) The existence of a general residuary clause in the will is by itself not sufficient to affect the construction of a particular residuary clause. AIR 1952 Bom 203 (208)=ILR (1952) Bom 825.

(8) Section 105 applies to Hindus and where a legacy is given to A, a Hindu alone and he predeceases the testator, the legacy will lapse. But from that it does not follow that illustration (ii) will apply if the bequest is contained in a Hindu will. To say so would be inconsistent with the rule laid down by S. 97 which is expressly made inapplicable to Hindus. AIR 1936 Bom 459 (462)=ILR (1937) Bom 679.

(9) A person capable of taking under a will must be such as could take a gift inter vivos and therefore either in a fact or in the contemplation of law be in existence at the death of the testator. (1872) 18 Suth W R 359 (367).

(10) A Parsi devised a house to his wife for her life and then to his son A and after him to

106. Legacy does not lapse if one of two† joint legatees dies before testator.* — If a legacy is given to two† persons jointly, and one of them dies‡ before the testator, the other legatee takes the whole.

Illustration

The legacy is simply to A and B, A dies before the testator. B takes the legacy.

[1865—S. 93.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

[†] What if the legacy is given to three or more persons nomination or to a class, without more, and one or more of them pre.decease the testator ?

[‡] What if the legacy to one of the joint tenants fails from any cause other than death ?

Section 105—Note 1 (contd.)

his widow subject to certain restrictions, and issues of A if any and then to his another son B. A died in the lifetime of testator's widow and left neither widow nor any issue. It was held that B was entitled to the house subject to life-estate of his mother. AIR 1918 PC 206 (208) = 45 Ind App 257.

(11) Gift to persons made as tenants-in-common —One of them dies before testator—His share lapses, and forms part of residue of testator's property unless it appears from the will that the testator intended that it should go over to some other person. AIR 1936 Sind 158 (160)=29 Sind L R 374 (DB).

(12) Where by the terms of a will an annuity is payable to a certain person putra pautradi krame, but is not charged on any specific property, and the legatee predeceases the testator; it must be held that the will confers an estate of inheritance, but the legacy lapses because the legatee has predeceased the testator. The words putra pautradi krame, etc., are merely descriptive of the estate which the testator proposed to confer on the legatee and do not import a gift over to the sons and grandsons of the legatee. AIR 1941 Pat 458 (458, 459)**AIR 1940 Pat 257 (257) (DB).

(13) If the testator clearly intended not to give a mere bounty to the legatee, but to discharge what he regarded as a moral obligation, and if that obligation still exists at the testator's death, there is no necessary failure of the testator's object merely, because the legatee dies in his lifetime; and therefore death in such a case does not cause a lapse. (1904) 2 Ch 30 (33).

(14) It can make no difference that legatee ceased to exist immediately after the death of the testator. The same law must be applicable whether it was a day or month, or year or ten years after. The legacy becomes the property of the legatee upon the death of the testator though he might not for some reason, obtain the receipt of it till long after. (1891) 2 Ch 236 (243). (Principles relating to lapse of legacies to charitable objects discussed.)

(15) Where a legacy is bequeathed to a particular charitable institution existing at the date of the will and the institution has ceased to exist before the testator's death, the legacy fails and lapses in the same way as in the case of an individual. 1895-1 Ch 19 (24, 34, 35). (Case law as to lapse of bequests to charitabie institutes discussed.)

(16) Refusal to receive legacy — Retracting such refusal—Effect—Lapse of legacy — Legacy held did not lapse. 1913-1 Ch 272 (276).

(17) The distinction between what is description only and what is the reason or motive for a gift or bequest may often be fine; but it must be drawn from consideration of the language and the surrounding circumstances.

Where a widow bequeaths property by her will to a person as being her husband's cousin and not as a persona designata, when it is found that the alleged relationship was a mere fabrication the bequest would be invalid. The real and actual motive of the bequest was the alleged relationship. AIR 1951 All 386 (391) = 1951 All L J 334 (DB).

(18) One H made a will in favour of his wife and sole heir D and died — D did not take out any probate or letters of administration but herself executed a will which was duly probated by her executors.

Held that the legatees under D's will were competent to apply for letters of administration in respect of the will executed by H. ILR (1970) 2 Cal 241 (245).

(19) Illustration (vi) to S. 105 is only a rule of evidence based upon legislative assumption which no longer survives after the Hindu Succession Act S. 21 of which lays down a rule of artificial presumption. The rule in illustration (vi) to S. 105 must therefore give way to S. 21 of the Hindu Succession Act (1956). AIR 1968 Guj 212 (216) = 9 Guj L R 129.

(20) Where the testator's intention was to make a disposition of all her properties and one of the clauses in the will made it clear that after the disposition in favour of 3 brothers, the remainder of the estate was to be taken by the sister—Held that the language of the residuary gift was wide enough to comprehend the entire residue including those assets comprised in any specific device which failed on account of the death of the devisee in the lifetime of the testator. The legacy of the deceased brother that had lapsed would therefore go to the sister. 1966 Ker L J 554 (558).

Section 106 — Note 1

(1) It is well established that the principle of joint tenancy is unknown to Hindu Law, except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law, which, under that law, passes by survivorship. But that does not mean that because the principle of joint tenancy is unknown to Hindu Law outside the coparcenary, there can never be a bequest to be taken by two persons jointly. A Hindu testator is perfectly at liberty like any other testator to make a joint bequest in favour

Section 106 — Note 1 *(contd.)*
of two or more legatees and such a bequest can be inferred from the explicit language used, or from the language interpreted in the light of the surrounding circumstances, which justify a joint bequest as the only reasonable inference. AIR 1969 Mad 96 (101) = (1968) 2 Mad L J 639.

(2) Section 106 does not embody any principle of law but it contains only a rule of construction of Statutes. It is not as if for the first time the legislature was introducing a new concept as applicable to wills made by Hindus — The legislature merely laid down the rule to help Courts in construing wills. It is not inappropriate, therefore, to say that although S. 106 in itself is inapplicable to Hindu wills, made prior to 1-1-1927, the rule underlying it could be made use of in construing a Hindu will dated 18 6-1925. AIR 1960 Andh Pra 368 (370) = ILR (1960) 2 Andh Pra 476 (DB). **AIR 1969 Mad 96 (101)= (1968) 2 Mad L J 639 (DB). (AIR 1960 Andh Pra 368, Dissented from.) **ILR (1968) 1 Mad 138 (155).

(3) The reference to "two persons jointly" in S. 106 means a bequest to a plurality of persons and not just to two persons in the arithmetical sense. AIR 1969 Mad 96 (99)= (1968) 2 Mad L J 639 (DB).

(4) Bequest in favour of wife and daughter — Held, on construction of will, that bequest was not joint bequest.. AIR 1969 Mad 96 (102) = (1968) 2 Mad L J 639 * * I L R (1968) Mad 138.

(5) Where there are no words to indicate an intention to create tenancies in common the rule of English law is to presume that the donees are joint tenants. This rule has been adopted in this section. The difference in dates as to handing over the management to each donee does not sufficiently indicate donor's intention to create tenancies-in-common. (1911) 34 Mad 80 (81) (DB).

(6) Where, it is found that the devisees were to take half and half, the doctrine of lapse would apply with reference to the half-share of the legatee who predeceases the testator and S. 106 will have no application to such a case. In such cases S. 107 will be applicable. AIR 1952 Punj 197 (198) = I L R (1952) Punj 207 (DB) * AIR 1961 Madh Pra 139 (140).

(7) It cannot be postulated that whenever a bequest or gift is made to two or more persons jointly they take it only as tenants-in-common, irrespective of the intention of the donor. Where it was sufficiently clear from the instrument that the intention of the testator was that the property should be solely enjoyed by his wife and son and in the event of the death of his son his wife should take the property as a whole and that under no circumstances should the property be inherited by his brother, it cannot be said that a tenancy in common had been created despite the wish of the testator that his wife and son should enjoy the property together. AIR 1960 Andh Pra 368 (370, 371) = I L R (1960) 2 Andh Pra 476 (DB).

(8) The question whether under a bequest a joint tenancy was created or a tenancy in common, is one that has to be decided on the facts of each case. The Courts however, lean against joint tenancy and whenever there is a doubt they lean towards a tenancy in common. Where a legacy is given to two persons under a bequest which contains a direction to divide the property half and half. the language of the direction clearly denotes a severance and the legatees should be held to be tenants in common. AIR 1961 Madh Pra 139 (140).

[See also 1950-1 All E R 120 (123).]

(9) Unless there is some indication in the document itself to show that it is a joint bequest the prima facie rule of construction is that the parties take it as tenants in common. The fact that the legatees are husband and wife is no such indication nor is the fact that they are to enjoy the properties from generation to generation. This would indicate only the nature of the estate in their hands. 1950-1 Mad L J 554 (555). (The principle of S. 106 can be applied even where the will is not governed by the provisions of the Succession Act.)

(10) Where the gift is to two donees jointly and the one is capable of taking and the other not, he who is capable shall take the whole. This principle does not depend on any peculiarity in English law and is applicable to this deed of gift. (1889) 16 Cal 677 (682) = 16 Ind App 44 (P C).

(11) Will by Hindu — Legacy to T, his sons and daughter — Death of T and daughter during testator's lifetime — Sons take whole legacy as the legacy was for parents and issue concurrently. AIR 1936 Bom 459 (462) = I L R (1937) Bom 679.

(12) Where the relevant portion of the will by a Christian ran "After my death my wife and foster daughter should get these properties and enjoy them" it was held, that there was a joint bequest to wife and foster daughter and that, therefore, the foster daughter was entitled to succeed to the whole of the property bequeathed by survivorship after the wife's death. AIR 1946 Mad 12 (14).

(13) Testator directing the net income of trust created during the joint lives of his wife and daughter to be applied first for the payment of monthly allowances to daughter and wife and the residue to be used for their purposes and then the children of the daughter — Held that there was a gift of the residue to wife and daughter in equal proportions during their joint lives and that on the death of one the survivor would take the whole for her lifetime. (1891) 15 Bom 443 (449, 450).

(14) Bequest to 'children' where a testator directed to sell the estate and pay the proceeds to and among his nephews and nieces as tenants-in-common and that in the case of death of any of his nephews and nieces, the children of the one dying should be paid the parents' share, it was held that the children took as joint tenants and not as tenants-in-common. 1915-2 Ch 216 (221). (Interpretation of 'monies to be paid'.)

(15) When a grant is made for maintenance in favour of two persons, prima facie it may be concluded that upon the death of either the other would be entitled to only a proportionate amount. But where a grantor provided that two ladies were to receive Rs. 650 and that after the death of both one-half of the amount was to be continued as maintenance of a son born of the womb of one of them named therein there was sufficient indication to the contrary so as to construe the grant to the two ladies as if they constituted one grantee with a right of survivorship inter se. (1913) 17 Cal L J 87 (91) (DB).

[See also AIR 1921 Cal 175 (175) (DB). (Case of annuity.)]

107. Effect of words showing testator's intention to give distinct shares.* — If a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C will only take so much as they would have had if A had survived the testator.

[1865—S. 94.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

108. When lapsed share goes as undisposed of.* — Where a share which lapses is a part of the general residue† bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

[1865—S. 95.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

[†] That is all of which no effectual disposition is made otherwise than by the residuary clause.

Section 107 — Note 1

(1) Where any property is bequeathed to two or more persons without any specification of shares, the natural presumption is that they are intended to take in equal shares : and when the estate bequeathed is one of inheritance, it is far more reasonable to suppose that each legatee and his heirs are the objects of the testator's bounty, than that he intends that the legatees should take by survivorship, and the heirs of the last surviving legatee should take the whole. Even in English law the leaning has been in favour of tenancy in common; and the Court decrees a tenancy in common as much as it can. (1897) 24 Cal 646 (654) (DB) * (1892) 15 Mad 448 (468, 469).

(2) The principle of joint tenancy as obtaining in England is quite foreign to the Hindu law and when property is gifted to more than one, in the absence of anything in the grant to the contrary the presumption is that the donees take as tenants-in-common. In case of Hindu wills, where the grant is to persons incapable of forming a Hindu joint family they can of course take only as tenants-in-common. Where the grant is to persons, who constitute such a family, it may even then be the prima facie view that they take in severalty and those who argue in favour of joint tenancy have to show some clear foundation for it in the terms of the will. (1905) 28 Mad 363 (373, 374) (DB) * (1896) 23 Cal 670 (679) = 23 Ind App 37 (PC). (11 Mad 258, Overruled.) * (1911) 33 All 41 (44) (DB).

[See also (1904) 27 Mad 498 (503) (DB).]

(3) Section 107 merely says that where, having regard to the dispositions and the surrounding circumstances, the inference is justified that the legacy was in severalty (which would necessarily be in distinct equal shares, unless unequal shares were specified) the principle of the section would apply, in the case of death of a legatee before the testator. AIR 1969 Mad 96 (101) = (1968) 2 Mad L J 639 (DB). (Bequest in favour of wife and daughter held not joint.)

(4) When all persons who are to benefit under the will are mentioned by name the bequest to them is not as a class but as tenants-in-common Where therefore a bequest is made to one sister and four brothers, mentioning their names and specific shares and one of the brothers dies before testator the dead brother's share lapses and forms part of the residue of testator's property and other brothers and sisters cannot claim it. A I R 1936 Sind 158 (159) = 29 Sind L R 374 (DB).

[See also (1898) 22 Bom 833 (840) = 25 Ind App 126 (PC).]

(5) Bequest of certain property in equal shares to the testator's children A, B and C or the survivors or survivor of them — A attesting the will — A's share becoming void falls into the residue and does not go over to B and C. (1903) 26 Mad 433 (437) (DB).

(6) Testator devising property in equal shares to two devisees—Death of one of devisees before death of testator — His share of devise lapses and there is partial intestacy — Other devisee does not take whole — S. 107 and not S. 106 applies. A I R 1952 Punj 197 (198, 199)=I L R (1952) Punj 207 (DB).

(7) The question whether by a bequest a joint tenancy was created or a tenancy-in-common is a question to be decided on the facts of each case. AIR 1961 Madh Pra 139 (140).

(8) Section 107 does not contain any rule for construing wills — Courts should first construe terms of will upon general principles to determine whether it creates a joint legacy or a legacy in severalty and then proceed to apply S. 106 or S. 107 as the case may be the specific contingency of death of one of legatees before death of testator. ILR (1963) Mad 138.

Section 108 — Note 1

(1) Will by one K in which a legacy was bequeathed to Mrs. J who was his sister — J attesting the will : Held that the legacy to Mrs. J lapsed under S. 54 of the Act of 1865 (S. 67 of this Act) and therefore should be dealt with under S. 95 of that Act (corresponding to S. 108 of this Act). (1882) 4 Mad 244 (246).

109. When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.* — Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator†, but any lineal descendant of his‡ survives the teststor, the bequest shall not lapse but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the will.

Illustration

A makes his will, by which he bequeaths a sum of money to his son, B, for his own absolute use and benefit. B dies before A, leaving a son, C, who survives A, and having made his will whereby he bequeaths all his property to his widow, D. The money goes to D.

[1865 – S. 96.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Or is already dead at the date of the will.

[‡] Whether such descendant was or was not alive at the death of the legatee.

110. Bequest to A for benefit of B does not lapse by A's death.* — Where a bequest is made to one person for the benefit† of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

[1865—S. 97.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Wholly or partially for example if A bequeaths to B property charged with a legacy to C, and B dies in A's lifetime, C is still entitled to his legacy.

Section 109 — Note 1

(1) The section is an exception to the general rule laid down in S. 105 and its effect is to prolong the life of the original devisee by a fiction of law for the purpose of giving effect to the will in which the gift which would otherwise, lapse occurs and it only points out the mode in which that is to be given. AIR 1947 Oudh 45 (62)=21 Luck 463 (DB).

(2) Under S. 109 in order to prevent a lapse it must be assumed that the legatee survived the testator. The section does not contain any provision that on such assumption being made the bequest is to take effect only in favour of the lineal descendants. The benefit of this section extends to all the heirs. AIR 1935 Oudb 437 (439)=11 Luck 376 (DB).

(3) This section applies to taluqdars. AIR 1947 Oudh 45 (62)=21 Luck 463 (DB).

(4) This section applies even if the legatee is dead at the date of the will. (1900) 27 Cal 521 (527)=27 Ind App 10 (PC).

(5) Bequest by a Hindu having no male issue to his eldest daughter and her sons from generation to generation—Legatee dying before testator having only two daughters—Testator leaving widow and other daughters after him — Daughters of legatee claiming property on equitable principles on analogy of this section : Held, the words "sons and grandsons" in the will meant only "heirs" and that the section or its principle could not be applied as the will was not governed by the Act. (1901) 24 Mad 299 (304) (DB)**1950-1 Mad L J 554 (555).

(6) Bequest to testator's daughter of certain amount—Daughter predeceasing testator leaving a daughter born during lifetime of testator; Held, S. 96 of Act of 1865 applied and the legatee's daughter was entitled to the legacy and further that, the rule in Tagore's case was not contravened as the effect of this section was to vest the legacy in the legatee herself treating her as dying immediately after the death of the testator. (1889) 16 Cal 549 (555) (DB).

(7) The expression "any child or other lineal descendant" in this section does not include an illegitimate son. AIR 1941 Pat 458 (458, 459). (An illegitimate child would be included in the word "child" only when there is a designatio personae.)

(8) There must be clear, unambiguous, unequivocal intention by testator in will itself before bequest in favour of lineal descendant, should he die before the testator can be defeated. (1954) 56 Bom L R 910 (914).

Section 110 — Note 1

(1) Will giving certain immovable properties to A but providing that they would remain in possession of B during his lifetime and requiring him to pay certain amount annually to A—Death of B during middle of year — Recovery by A in excess of proportionate amount of profits should be appropiated towards the discharge of the liability of B. AIR 1962 Cal 513 (517) (DB).

(2) Will—Construction — Will has to be read as whole and dominant intention of testator has to be seen—Absolute estate to daughters — Restriction in case of certain contingency. AIR 1962 Mad 259 (261 to 263) = (1962) 1 Mad L J 401 (DB).

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111. Survivorship in case of bequest to described class.* — Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death.

Exception. — If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.†

Illustrations

(i) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy will belong to C and D, to the exclusion of the representatives of E.

(ii) A lease for years of a house, was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator; B had two children living, C and D, and he never had any other child. Afterwards during the lifetime of A, C died, leaving E, his executor. D has survived A, D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(iii) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator. B had two children living, C and D, and, after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will. E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

(iv) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B, D and E have survived B. One-third of A's land belong to D, E and the representatives of C, in equal shares.

(v) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(vi) A bequeaths 1,000 rupees to "all the children born or to be born" of B to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the after-born child of B.

Section 111 — Note 1

(1) It is a question of construction in each case whether the class is to be ascertained at the death of the testator or at a later date. It is for those who assert that the class is to be ascertained at a date other than that of the death of the testator to show that that is the fair result of the language of the will. 1920 App Cas 794 (802).

(2) Where a will contains an immediate gift to the children of a living person and nothing more and there are children living at the death of the testator those children only take. Where, however, the period of distribution is postponed the gift will apply not only to the children living then at the death of the testator but also to those born before the period of distribution. (1891) 3 Ch 197 (202) ** (1879) 5 App Cas 123 (134) ** (1894) 18 Bom 7 (13). ** (1905) 7 Bom L R 207 (211).

(3) Where the gift is by will to a class the rule of lapse of bequest does not apply. The true rule is that those members of the class who are at the testator's death capable of taking take and that those who become incapable of taking whether by dying in the testator's lifetime or by attesting the will or by some other operation of law do not take. (1876) 4 Ch D 165 (172, 173).

(4) Will – Bequest to described class—Normal rule is that persons belonging to that class who take benefit of bequest are those who are living at time of testator's death unless case falls within exception to S. 111 — Held on construction of will that case fell within main provision of S. 111 and not within the exception. A I R 1967 S C 433 (435) = (1967) 63 ITR 466. (AIR 1963 Mad 179, Affirmed.)

(5) Will providing that after testator's death A shall enjoy properties during her lifetime and after her death K or his heirs shall get it absolutely – K dying in 1942, testator in 1959 and A in 1966 — Held, since there was prior bequest in favour of A and distribution to heirs of K was postponed during lifetime of A, ascertainment of heirs of K has to be made as on date of death of A. (1968) 81 Mad L W 587 (589).

(6) In case of a bequest to a class, even by a Hindu under a power of appointment, the appointment should be made during the life of tenant so that the appointee may be ascertained when the event arises when he is to take and secondly the persons who take must be alive at the death of the testator. (1892) 16 Bom 492 (499) (DB).

[See also (1803) 8 Ves Jun 375 (381)=32 E R 400. (Bequest to such of the children of A as B shall by will direct and in default of such directions, among the children share and share alike —B in executing her power of appointment is to take only those as objects of her disposition who were born before her death.)]

(7) On reading this section with S. 119 it is clear that the title to the property bequeathed to a class of persons certainly vests in such of the persons of that class who are actually alive at the testator's death. This section contem-

(vii) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

[1865—S. 98.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

[†] This indicates that the section applies only to vested interests.

CHAPTER VII

OF VOID BEQUESTS

112. Bequest to person by particular description, who is not in existence at testator's death.* — Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he is dead, to his representatives.†

Illustrations

(i) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(ii) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son, Afterwards, durding the life of B, a son is born to C. Upon B's death the legacy goes to C's son.

(iii) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son, named D, is born to C. D dies, then B dies. The legacy goes to the representative of D.‡

(iv) A bequeaths his estate of Green Acre to B for life, and at his decease, to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(v) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.§

[1865-S. 99.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

Section 111 — Note 1 (contd.)
plates the cases of deferred possession and not deferred vesting. AIR 1933 Mad 885 (887) (DB).

(8) Mere interposition of a life estate does not prevent the vesting of the remainder even in case of a legacy to a class, the time of vesting being the time of the death of the testator, and not the termination of the life-estate. AIR 1935 Mad 865 (866).

(9) A will ran thus: "My self-acquisitions shall after my lifetime be enjoyed in absolute rights by Yasodai, now aged 3, daughter of my daughter Lakshmi Ammal's son and my grandson R. and other children of R male and female who would be born to him hereafter on their attaining majority. None else shall have any manner of right over the said properties. Until the aforesaid minors attain majority my danghter L shall be their guardian and with the income of the properties shown below she will meet the family expenses, take care of the minors and on their attaining majority make over the said properties to them". Held, that the will was in favour of a class of persons represented by Y who was then in existence, viz., the children born and to be born of R. The date of distribution was however postponed to their attaining the age of majority. Under Ss. 111 and 112, the legacy would enure for the benefit of all those persons who were in existence at the death of the testator and all those who came in existence before the legacy vested in possession. That period was called the period of distribution. A I R 1959 Mad 475 (477, 478).

SECTION 112—SYNOPSIS

1. Scope.
2. Applicability to Hindu wills.
3. "Kindred".
4. Exception.

1. Scope. — (1) A person capable of taking under a will must be such a person as could take a gift inter vivos and therefore, must either in fact or contemplation of law be in existence at the death of the testator. (1897) 21 Bom 709 (721) = 24 Ind App 93 (PC).

(2) Will providing three legacies in succession —Last legatee or descendants of three to nomi-

[†] This rule must be understood as subject to restrictions in Ss. 113 and 114.

[‡] This is an illustration to the Exception. Gift is differed by reason of a prior bequest.

[§] Here the gift is deferred 'otherwise' as contemplated by the Exception.

Section 112 — Note 1 (contd.)

nate successor—In event of disagreement between them Government to appoint successor. Will held invalid as offending rule of perpetuities and as creating interest in unborn persons. AIR 1929 Oudh 494 (506)=5 Luck 305 (DB).

(3) A gift to a woman during widowhood and after death or remarriage to persons or class of persons living at her death has been held to enure on her marriage for the immediate benefit of the persons or class of persons then living. (1918) 1918 1 Ch 368 (370, 371).

(4) A testator, disinheriting his son gave away the property to his brother and nephew who were however to get only a limited interest and the property was to vest in the grandson if one were to be borne to the testator. The testator's daughter-in-law, if alive at the time of testator's death; was to get a share in the income from the property. The son of the testator married only after the death of the latter and begot a son. Held if the contingency entitling the daughter-in-law to a share in the income from the property could be fulfilled, it was obvious that S. 112 could not make the bequest in her favour void; however since she did not come into existence at the time of the testator's death because the son did not get married till then that provision in respect of daughter-in-law shall not take effect. 1969 All L J 950 (956) (DB).

(5) Section 112 refers to a case where the bequest is made to a person by particular description and who was not in existence at the testator's death. AIR 1959 Mad 475 (478).

(6) An idol is only a symbol of the Deity which must be always in existence and therefore a bequest made to the devasthanam of a certain Deity is not void merely because the temple or the idol is not in existence at the date of the will. AIR 1952 Nag 242 (243)=ILR (1949) Nag 765 (DB).

2. Applicability to Hindu wills.—(1) S. 112 is not included in the limitation upon the power of a Hindu to make a bequest by will to an unborn person contained in S. 3 of the Hindu Disposition of Property Act — S. 112 therefore does not make a bequest by a Hindu in favour of an unborn person void. AIR 1946 Cal 396 (400) (DB). (8 Cal 637 held no longer good law,)

[But see AIR 1933 Pat 647 (649)=12 Pat 708 (DB) ** (1889) 8 Cal 637 (638) (DB): (Reversing 8 Cal 157,)]

(2) The rules of Hindu law regarding wills are not affected by the Hindu Wills Act S. 110 which has been make applicable by S. 3 of Wills Act to Hindus does not apply to wills under Hindu Law. (1912) 39 Cal 87 (93) (DB) ** AIR 1921 Mad 258 (264) = 44 Mad 446 (DB).

(5) The principle of Hindu law which invalidates a gift other than to a sentient being capable of accepting it does not apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death (and does not make such a bequest void.) (1910) 37 Cal 128 (134) (FB).

3. "Kindred". — (1) The word "kindred" should not be limited to blood relations when that word is imported into a Hindu will. Therefore a bequest made by a Hindu father to the would be wife of his son may be deemed a bequest to a person described as standing in a particular degree of kindred to his son. (1912) 39 Cal 87 (101, 103) (DB).

(2) Bequest to relative's would be wife in existence at the testator's death is valid, notwithstanding the provisions of S. 99. AIR 1923 Nag 105 (106)=18 Nag L R 143.

4. Exception. — (1) A will executed by a Hindu provided inter alia : "A, first male child by the present wife to be heir ; in default of any male child being born to him or dying in childhood, either a son of B or C to be heir. The boy should live with the daughter-in-law as her adopted son." It was held that no son of A was in existence at the time of the testator's death and it could not have been within the contemplation of the testator that the operation of the bequest should be suspended indefinitely, and the exception to S. 112, also could not apply. AIR 1933 Pat 647 (649)=12 Pat 708 (DB).

(2) The general principle that a donee must be in existence for the validity of a gift is subject to an exception in the case of conditional gifts on marriages, so that a bequest in favour of a girl who was to be married by the testator's son and who was in existence at the time of his death is valid. (1912) 39 Cal 87 (92) (DB).

(3) From the Exception to S. 112 it is clear that the legacy would enure for the benefit of all those persons who were in existence at the death of the testator and all those who come in existence before the legacy vested in possession. That period is called the period of distribution. In such cases the members of the class entitled to take are not only those who were in existence at the date of vesting of title (i.e. when the will took effect) but also those who subsequently come into existence before the vesting of possession or period of distribution. AIR 1959 Mad 475 (478, 479).

(4) K died leaving behind him, his widow S, two married daughters and an unmarried daughter R—K executing a will reciting that after S's death, R's future husband should enjoy properties with absolute rights—Plaintiff was born during K's lifetime but marriage of plaintiff with R was performed after K's death—Held, that the bequest in favour of R's future husband was not void on the ground of uncertainty as he was in existence at the time of testator's death and was married before date of distribution, that is, the death of S. ILR (1971) Cut 493 (500).

(5) J applied for the grant of letters of administration of the estate of his mother's (M's) father, G. The testator owned 9 items of immovable property. Of these 3 items were bequeathed to his wife with a direction to discharge his debts. The will declared that M, her husband and their children were to have a greater share of the assets than other daughters who had been given dowry at the time of marriage while M was not given any dowry. It was further provided that M and her husb an

113. Bequest to person not in existence at testator's death subject to prior bequest*—Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed. †

Illustrations

(i) Property is bequeathed to A for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death. A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(ii) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(iii) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life and may be divisible among her children after her death. A has no daughters living at the time of the testator's death but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under eighteen of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(iv) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest to persons not yet born, of a life interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

[1865—S. 100.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III. But it contemplates a power of disposition extending further in time than Hindu law allows, as by that law someone in existence at testator's own death must be the ultimate legatee. (See 9 Beng. 377 : 6 Bom. 38.)

[†] The section does not apply to trusts, wills and other testamentary dispositions made in the State of Bombay—See Bom Act 54 of 1947, S. 3.

Section 112 — Note 4 (contd.)

were to take the income but not to alienate properties, such power being vested in their children. Held that the case was governed by the Exceptions to S. 112 and the effect of the clause was to give a beneficial interest to J who was one of the sons of M and her husband and J prima facie had a right to administer the estate. AIR 1955 Trav-Co 177 (178)=ILR (1955) Trav-Co 704 (DB).

Section 113 — Note 1

(1) Sections 100, 101, 102, constitute law of British India applicable to succession to property of every one except Hindus, Mahomedans or Buddhists. They are, therefore, applicable to those subject to a variety of systems of jurisprudence, and must therefore be construed according to the generally current meaning of the words used and apart from such technical considerations as are only appropriate in the law of England. A I R 1923 P C 122 (125). (Interpretation of Parsi will.)

(2) The difference between S. 13, Transfer of Property Act and S. 113, Succession Act is that the former relates to transfer inter vivos while the latter deals with bequests which take effect only on the death of the testator. 1969 All L J 950 (956) (DB).

(3) The contention that a residuary legacy cannot be created in favour of a person who had not been born at the date the will came into effect has no force, for it ignores the fact that S. 113 of the Succession Act, becomes applicable to Madhya Pradesh by virtue of the Hindu Disposition of Property Act, 1916. AIR 1954 Nag 277 (279)=ILR (1954) Nag 315 (DB).

(4) A Hindu can now make a valid bequest in favour of an unborn person subject to the limitation contained in Ss. 113 and 114. In scrutinising the validity of the bequest the rules in Ss. 113 and 114 have to be applied as at the testator's death. AIR 1949 P C 244 (248) = 76 Ind App 104.

(5) Omission of S. 100 in Act 8 of 1921 does not make S. 113 inapplicable to Hindu wills in Madras. AIR 1934 Mad 705 (708) = 58 Mad 15 (DB). (Hindu will in city of Madras conferring life estate on son and after his death a life interest by way of remainder to son's wife with a further gift after her death to certain other person—Wife not in existence at the death of testator—Gift to wife is void.)

(6) Rules in Ss. 113 and 114 have to be applied as at the testator's death. They include the possibilities existing at that time and are not confined to actual events. AIR 1946 Cal 396 (401, 405, 406) (DB).

Section 113 — Note 1 (contd.)

(7) The expression "remaining interest" in S. 113 connotes an interest which is as complete as an interest which the testator had in the thing bequeathed, such interest not being fettered or limited except by and to the extent of the prior estate; but when a vested interest is given in the thing bequeathed in favour of an unborn person, the vested interest will not be avoided by reason of imposition of limitations which restrict enjoyment. (1955) 57 Bom L R 763 (772).

(8) A vested interest granted under a will in favour of an unborn person, possession of which is deferred till the happening of a certain event, is not void by reason of the provisions of S. 113. (1955) 57 Bom L R 763 (772).

(9) Will in favour of grandsons A and B, B being unborn — Property to be given to grandson existing at the time, on his attaining 21 years B was born before A attained 21 years — Bequest in favour of unborn grandchild is valid. AIR 1965 Punjab 370 (371, 372).

(10) Where by reason of a contingency the estate devised in favour of an unborn person subject to a previous bequest may not take effect the bequest is void, as it does not comprise the whole of the remaining interest of the testator in the thing bequeathed. (1955) 57 Bom L R 763 (776).

(11) Where an estate which is to vest in an unborn person subject to a prior bequest is made subject to a condition of defeasance, the bequest is void. (1955) 57 Bom L R 763 (776).

(12) Where an interest which is to vest on the birth of a devisee, who at the death of the testator is unborn, is granted, subsequent limitations which merely defer enjoyment are not void by reason of the provisions of S. 113. (1955) 57 Bom L R 763 (776).

(13) It is always open to a testator, subject to Ss. 113 and 114 to give a fractional interest in any property, even to an unborn person. A fractional interest in property provided it is not subject to other conditions or limitations, comprises the whole interest of the testator in the thing bequeathed — the thing bequeathed being the fractional interest. There is no warrant for holding that a fractional interest in property cannot be a "thing" within Ss. 113 and 114. (1955) 57 Bom L R 763 (771).

(14) Reference to a prior bequest in the section does not exclude the idea of more than one prior bequest. The illustrations given in the text beneath these sections do not indicate that when there are two or more prior life interest the bequest would be void even if it comprised the whole of the interest of the testator. AIR 1944 Mad 22 (23). (Hindu will — After testator's and his wife's death his only daughter K and children that might be born to her to enjoy his property—Will held conferred absolute estate on K—Bequest to K's children held valid under S. 113.)

(15) If there is a possibility of the interest given to a beneficiary being defeated either by contingency or by a defeasance clause, the beneficiary under the later bequest does not receive the interest bequeathed in the same unfettered form as that in which the testator held it and the bequest to him does not, therefore, comprise the whole of the remaining interest of the testator in the thing bequeathed within S. 113. AIR 1944 P C 67 (69, 70) = 71 Ind App 93 ** AIR 1957 Cal 118 (119). (Settlement deed—Gift in favour of unborn grand children — Transfer not of whole interest in property—Gift is void.)

(16) H executed a will in favour of her deceased sister's son P. The executors were to hand over the funds to P's trustees, who were to create a trust so that the funds may go to the children of P. P was not married till the death of H. Subsequently P married D and had from her a daughter V, who died shortly after her birth. P then died without any issue but left a will leaving the funds to D absolutely. It was held that P took only a life interest in the funds and further that V, immediately she was born and came into existence became entitled to the bequest. After V's death P took as V's representative and hence bequest by P in favour of D was valid. AIR 1946 Bom 134 (136, 138).

(17) Section 113 deals with the quantum of interest which may be bequeathed in favour of unborn persons. By enacting S. 113 the Legislature disapproved of any attempt to put limitations upon the estate to be given to persons unborn at the time when the will comes into operation. (1955) 57 Bom L R 763 (772).

(18) Will directing that son or sons of his son whether natural or adopted to become entitled to residue of testator's property — Residue to be made over to son if only one on completion of 21 years and if more than one then on youngest son completing 21 years — Son adopting son after testator's death — Held residuary estate vested as soon as son was adopted — S. 113 not applicable. AIR 1949 PC 244 (248, 249)=76 Ind App 104.

(19) A Christian testator bequeathed to "F an annuity of Rs. 300 and to H Rs. 240 to each to be paid by monthly instalments of Rs. 25 and Rs. 20 respectively. These aunuities will continue to be enjoyed by the said F and H and their male descendants and in case of the death of any of them without any male issue, the other or his male descendants will be entitled to both annuities" — Held that the bequest was a bequest to unborn persons of something less than the whole interest that would remain to the testator in the thing bequeathed after the death of persons to whom prior bequests had been given. This position was covered by the first illustration to S. 113 and the grandsons of F and H's youngest son would take nothing. ILR (1947) 1 Cal 304 (306).

(20) Under a will by a Hindu father certain villages were given to his daughter for Pasupu kumkum. The document further provided that she should pay the government and other taxes payable thereon and that she and family would enjoy the properties "so long as there be male issue in the family and the villages should revert to the parent estate on failure of such issue"—Held that as the male issue was not born when his grandfather died and the will did not confer absolute estate on the male issue, the gift over became void and the absolute estate in favour of the daughter remained. AIR 1960 Andh Pra 509 (515) (DB).

(21) Will providing that testator's widow would be malik of his property and if any sons be born to his son during her lifetime, they would after her death be owners of property — Estate conferred on widow held limited one and gift over to son's son held valid. AIR 1947 Lah 199 (205, 206) (DB).

114. Rule against perpetuity.*—No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations

(i) A fund is bequeathed to A for his life and after his death to B for his life: and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(ii) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(iii) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18, but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(iv) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughters whose share it was. All these provisions are valid.

[1865—S. 101.]

[Cf. Transfer of Property Act (1882), Ss. 14, 40.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III. This rule should rather be called the rule against remoteness.

Section 113—Note 1 (contd.)

(22) See also notes under S. 13 of the AIR Commentaries on the Transfer of Property Act, 1882.

Section 114 — Synopsis

1. Scope.
2. Applicability to Hindu wills.
3. Bequests to charitable objects.
4. "In existence."
5. "Thing bequeathed."
6. Bequest to a class.

1. Scope. — (1) The true effect of the rule against perpetuities both in England and in India is that an executory devise or other future limitation must vest, if at all, not later than a life or lives in existence at the time when the deed under which it is created and the period of minority and the possible period of gestation, and if it is not so likely to vest, the devise or limitation would be regarded as invalid. The devise or limitation in order that it may be good is required to be created in such terms that it cannot possibly vest after the expiration of the life or lives in being and the period of minority and the period allowed for gestation. (1955) 57 Bom L R 763 (769, 770).

(2) Section 114 has no application to a case where the thing bequeathed is the right to receive a perpetual allowance out of a specified fund which was never to vest in anyone. Bequests of annuities are dealt with in chap. XX. I L R (1947) 1 Cal 304 (306).

(3) Section 113 has nothing whatever to do with the rule against perpetuities. It is true that both Ss. 113 and 114 deal with estates in favour of unborn persons. Section 113 deals with limitations which may be validly placed upon the quantum of interest which may be conferred upon unborn persons, while S. 114 deals with the period of vesting of estates granted to unborn persons but otherwise those provisions do not dealt with restrictions of the same nature or quality. (1955) 57 Bom L R 763 (770, 774).

(4) In the case of the exercise of a power of appointment which is not a general but a limited power, the rule against perpetuities cannot be applied in relation to the date of the proposed exercise of the power of appointment, whether it is made by settlement or will. 1959-3 W L R 116 (120).

(5) There is no restriction in Indian law to a corporation taking property under a will. The fact that under a will a corporate body may hold the property forever is no infringement of the rule against perpetuity. A I R 1948 Oudh 160 (161, 162)=23 Luck 111.

(6) Gift under will in favour of living son to take effect when the present "war with Germany shall terminate" and "peace be declared" — Rule against perpetuities held not transgressed as the event contemplated was an event which was limited to the duration of a lifetime in being (viz., the son). 1955-1 All E R 788 (791).

(7) According to the will of the testator property was to go to his widow for life and after her death to two of his grandsons — Held, that this was a valid disposition. The will did not create an estate in perpetuity. AIR 1956 Punj 145 (146)=ILR (1956) Punj 157.

(8) When by a disposition a previous life estate is created, and the ulterior estate is bequeathed to a person on his attaining age,

Section 114—Note 1 (contd.)
such disposition is valid. A I R 1920 Mad 812 (813) (DB).

(9) Testator's intention to vest the interest in his son's sons before they attain the age of twenty-five and to divest them of it if they die before attaining that age — Payment of interest and not vesting dependant upon attaining that age — Question of remoteness does not arise. 1899-2 Ch 739 (746).

(10) The rules contained in this section have to be applied as at the testator's death and include possibilities existing at that time and are not confined to actual events. A I R 1946 Cal 396 (400) (DB) ** AIR 1919 Cal 809 (812, 813) = 46 Cal 485 (DB) ** (1902) 29 Cal 260 (276, 277) ** (1888) 39 Ch D 155 (158).

(11) The mere fact of some of the restrictions and qualifications in the will being void, cannot affect the validity of the arrangement. (1904) 31 Cal 111 (127) (DB).

(12) A person created a will in which he said that his estate shall remain intact and that his heirs, sons, son's sons and great grandsons and so on in succession shall be entitled to enjoy the profits thereof. Alienation was strictly prohibited by the will as also division of the estate —Held, that what the testator intended to give was the enjoyment of the profits to the persons mentioned in the will and that as his object was to create a perpetuity as regards the estate and to limit, for an indefinite period the enjoyment of the profit thereof the bequest was invalid. (1885) 11 Cal 684 (692, 693) = 12 Ind App 103 (PC).

2. Applicability to Hindu wills. — (1) By virtue of S. 57, S. 114, being one of the sections mentioned in Sch. III, applies to wills and codicils made by Hindu made after the Act came into force. AIR 1949 P C 244 (245)=76 Ind App 104.

(2) Section 114 enacts the rule against perpetuity (or remoteness) as prevailing in India. According to the rule enunciated in that section a bequest in favour of an unborn person to be valid must vest within a period covered by the lifetime of one or more persons existing at the time of the testator's death and the minority of the person who shall be in existence at the expiration of that period and to whom if he attains full age the thing bequeathed is to belong. By the ordinary law a Hindu attains majority at the age of 18. It follows, therefore that the longest period within which the bequest must vest in order to be valid is a life or lives in being plus 18 years thereafter. A I R 1949 P C 244 (246)=76 Ind App 104.

(3) The rule in S. 114 must be applied in the light of the Hindu Disposition of Property Act, the provisions of which are subject to the section. Therefore, a bequest to an unborn person or a class is valid provided the bequest vests in that person or in the whole or some members of that class within the period prescribed by the section. AIR 1946 Cal 396 (404) (DB).

[See however A I R 1921 Mad 258 (267) = 44 Mad 446 (DB). (The fact that a bequest is void under Hindu law is not a ground for refusing to apply S. 101, and to hold that it is void also under this section so as to attract the provisions of S. 102.)]

(4) The will of a Hindu provided: "If no son is born, but one or more daughters are born, then those daughters shall with sons, grandsons and so on in succession receive ownership of my estate. If no children are born to me my nephew shall become my sthulabhishikto and keep the estate intact and enjoy proceeds of my estate with sons and grandsons and so on in succession" — Held that there is not any express prohibition against alienation of the estates which were heritable and the gift is valid. (1897) 24 Cal 834 (849)=24 Ind App 76 (PC).

(5) This section lays down a special rule which differs from the English law on the subject and there is no reason why it should be invoked for the construction of Hindu wills made before the Act had come into operation. See AIR 1919 Cal 461 (463) (DB).

3. Bequest to charitable objects.—(1) The language of this section is clear and unequivocal and applies to all bequests whether they are of charitable nature are not. In this respect it differs from the rule of English law in which an exception is made in favour of charities. AIR 1919 Cal 809 (813) = 46 Cal 485 (DB) ** AIR 1941 Rang 305 (310)=1941 Rang L R 410 (DB).

(2) Hindu will — Where the purposes are clearly religious and charitable in their nature, the trust is not invalid merely because it transgresses against the rule which forbids the creation of perpetuity. (1905) 1 Cal L J 605 (614).

(3) Charitable trusts though made in perpetuity are not within the mischief of S. 114 provided the vesting is not delayed beyond the statutory period and there is no remainder over. AIR 1941 Rang 305 (308, 311) = 1941 Rang L R 410 (DB).

(4) Testator's will containirg gift of residue of his estate to a family idol — Testator appointing his brothers as shebaits and directing maintenance of their families out of offerings to deity—Held, that will contains a gift of entire property to the idol, that the members take only maintenance from the offerings made to idol and the gift is valid. (1889) 16 Cal 103 (114) = 15 Ind App 159 (PC).

(5) A bequest for the performance of masses according to the forms of the Roman Catholic religion whether the masses be for the testator's own soul or for souls generally is void as it offends the rule against perpetuities. (1892) 15 Mad 424 (442) (DB).

(6) Direction in will that the trustee should look after and keep in repair the graves of himself his wife and his child is not a charity but a perpetuity and therefore void. (1913) 40 Cal 192 (207).

(7) A direction by a testatrix to the trustees to invest such a sum in trustee securities as would be "sufficient to train a candidate for the priesthood until such time as a candidate should come forward from St. Saviour's Church St. Albans." held failed ab initio even as a charitable gift, the gift being limited to future event so remote and indefinite that it transgressed the rule against prepetuities. (1950) 2 All E R 191 (192).

4. "In existence." — (1) The section makes distinction between living person and person in existence. The words "in existence" must mean 'existence in law' and be either in fact or in contemplation of law. A I R 1946 Cal 396 (412) (DB).

115. Bequest to a class some of whom may come under rules in sections 113 and 114° — If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be †[void in regard to those persons only, and not in regard to the whole class].

Illustrations

(i) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; †[and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A].

Section 114 – Note 4 (contd.)

5. "Thing bequeathed." — (1) All property, whatever be its nature, is subject to the rule of perpetuity enunciated in S. 114. (1896) 20 Bom 511 (516) (DB) * (1892) 15 Mad 424 (446) (DB) * 1916-1 Ch 91 (96).

(2) A fractional interest in property can be a "thing" within Ss. 113 & 114. (1955) 57 Bom L R 763 (771).

6. Bequest to a class. — (1) The rule with regard to perpetuities is that the limitation must be such that every member of the class, where it is the question of a class gift, must of necessity take within the time allowed. (1888) 39 Ch D 155 (164).

(2) Limitations to a woman for life and then to any husband she may intermarry and who may survive her for life and then to her children is not within the rule against perpetuities if the ultimate takers are to be the children of a person living at the date of a will. 1915-1 Ch 493 (502).

(3) Where the vesting of the legacy is postponed for the lifetime of persons living at the testator's death and a period of twenty-one years, the legacy in favour of all the legatees fails if it fails as regards any, due to non-fulfilment of the conditions laid down in the Majority Act for extending the period of minority up to 21 years. AIR 1921 Mad 258 (261) = 44 Mad 446 (DB). (Case before the amendment of S. 115 in 1929.)* (Case before the amendment of S. 115 in 1929.) * (1913) 17 Cal W N 488 (489, 490) (PC). (Do.) * AIR 1925 P C 244 (247) = 52 Ind App 310. (Do.)

(4) Gift to grandchildren of named person living at testator's death or born within 5 years therefrom and attaining 21 —Rule against perpetuities not infringed. 1949-1 All E R 459 (460).

(5) Hindu will — Provision as to vesting of residuary estate—Son or son's sons to get residue —Residue to be made over to son if only one, on completion of 21 years and if more than one, then on youngest son completing 21 years — Son adopting son after testator's death — Held residuary estate vested as soon as son was adopted — Assuming S. 114 applied, bequest to adopted son would be saved by S. 115. A I R 1949 P C 244 (249)=76 Ind App 104.

(6) See also Notes under S. 115, Succession Act.

Section 115 — Note 1

(1) This section as it stood before the amendment in 1929 was based upon the English Rule as laid down in (1817) 2 Mer 363 (390, 391)=35 E R 979.

(2) In England it is well settled, that where a gift is made to a class of persons some of whom are incapable of taking, the disposition fails as to all. This rule rests upon the ground that the intention of the testator was to benefit all the members of his class equally, and that it is impossible to know what shape his wishes would have taken if he had known that they could not be carried out as intended. The rule was applied in this country to the wills of Hindus as in consonance with the Hindu law and a convenient rule to follow. (1902) 19 Cal 260 (276)* AIR 1925 P C 244 (247) = 52 Ind App 310* (1884) 6 All 560 (572, 573, 574) = 11 Ind App 164 (P C). (Gift of ancestral property by Hindu father to his grandson with consent of son — Deed expressing gift to children of testator's son — Gift deed, a sort of family arrangement — Immediate transfer of possession in grandson's name — Held that the deed confers a present interest upon a present person and is not affected by Ss. 100, 101 and 102 of Act of 1865.)

[See however (1889) 12 Mad 393 (399, 400) (DB). (The provisions of the Act do not affect any rule of Hindu law — Held also that the case does not come under the section) ** (1911) 38 Cal 188 (197, 200, 201) (DB).]

(3) This section itself does not confine its application to members of a class who are in existence at the date of a testator's death. The section is of general application and effect and applies to all members of a class in whose favour a bequest is made. AIR 1946 Cal 396 (403) (DB).

(4) The words of S. 115 are sufficiently wide and do not in any manner limit its application to members of a class who are in existence at the date of the testators' death. AIR 1949 P C 244 (250) = 76 Ind App 104.

(5) A gift to a class as distinguished from a gift to individuals has a well-recognised meaning in law. A gift to a class implies an intention to benefit those who constitute the class and to exclude all others but a gift to individuals described by their several names and descriptions, though they may together constitution a class implies an intention to benefit the individuals named. Important legal consequences flow from this destination. Then the addition or diminution of members does not affect a class the share of each being dependent upon the ultimate number of persons. Again in case of death of a member of the class the legacy does not lapse but passes by survivorship to the other members. AIR 1949 F C 64 (69)=1948 F C R 239.

(6) Will directing son or sons of his son whether natural or adopted to become entitled to residue of testator's property. Residue to be made over to son if only one on completion of 21 years

(ii) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (i). ‡[Although the mention of B, C, and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death.]

[1865—S 102.]

[Cf. Transfer of Property Act (1882), S. 15.]

[°] The section applies to Hindus etc. — See S. 57 & Sch. III.

[†] Substituted for "wholly void" by the Transfer of Property (Amendment) Supplementary Act, 1929 (XXI of 1929), S. 14 (w.e.f. 1.4.1930].

[‡] Substituted for certain words, ibid.

STATE AMENDMENTS

Maharashtra & Gujarat

In its application to the States of Gujarat and Maharashtra, in S. 115, (in relation to trusts, wills and other testamentary dispositions), omit the words "section 113 or" —Bom. Act 54 of 1947, S. 2 & Sch. [1-1-1945] : C. A. 11 of 1960, S. 83.

*[116. Bequest to take effect on failure of prior bequest — Where by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.]†

Illustrations

(i) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life and after the decease of such son to B, A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 114. The bequest to B is void.

(ii) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B, A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under section 114. The bequest to B is void.

[1865 — S. 103.] [Cf. Transfer of Property Act (1882), S. 16.]

[*] Substituted for the original section by the Transfer of Property (Amendment) Supplementary Act, 1929 (XXI of 1929), S. 14 [w.e.f. 1.4.1930].

[†] The section applies to Hindus etc. — See S. 57 & Sch. III.

STATE AMENDMENTS

Maharashtra & Gujarat

In its application to the States of Gujarat and Maharashtra in S. 116, for the words 'sections 113 and', substitute the word 'section'.—Bom. Act 54 of 1947, S. 3 [1-1-1945].

The amendment is effective only as regards trusts, wills and other testamentary dispositions.

Section 115 — Note 1 (contd.)

and if more than one then on youngest son completing 21 years — Son adopting son after testator's death — Held residuary estate vested as soon as son was adopted — Section 115 not applicable — Assuming S. 114 applied S. 115 saved bequest to adopted son. A I R 1949 P C 244 (248, 249) = 76 Ind App 104.

(7) A testator who professed Christian faith bequeathed as follows: "To Fela Hari an annuity of rupees three hundred and to Hela Hari rupees two hundred and forty to each to be paid by monthly instalments of rupees twenty-five and rupees twenty respectively. The first payment whereof shall be made one calendar month after my death. These annuities will continue to be enjoyed by the said Fela and Hela and their male descendants and in case of the death of any of them without any male issue, the other or his male descendants will be entitled to both annuities. A certain sum of money to be invested in Government securities to be set apart by my trusties with power to vary investments to produce such a sum of money as will when invested produce by the income thereof an annual sum equal to the amount of annuities aforesaid mentioned"; It was held that the bequests to Fela and Hela and their male descendants were valid but the same were affected by Ss. 113, 114 and 115 of the Act so as to prevent Naresh the youngest son of Fela who was not in existence at the time of the testator's death as also the grandsons and remoter descendants of Fela and Hela from taking any benefit. ILR (1947) 1 Cal 304 (308, 311, 312.)

(8) Where under a will a fund is bequeathed to *A* for life during wifehood or widowhood and then to "all or any of the children of *B* who attain 21" and there is no child of *B* in existence when *A's* interest ceases, the class is not closed when the subsequently born first child of *B* attains 21 and the fund is not distributable. (1951) 1 All E R 628 (631);

*[117. Effect of direction for accumulation.† — (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumutation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly.]

[1865 — S. 104.]

[Cf.: Transfer of Property Act (1882), S. 18.]

[*] Substituted for the original section by the Transfer of Property (Amendment) Supplementary Act, 1929 (XXI of 1929), S. 14 [w.e.f. 1.4.1930].

[†] This section applies to Hindus etc. — See S. 57 & Sch. III.

118. Bequest to religious or charitable uses.*—No man† having a nephew or niece or any nearer relative† shall have power to bequeath any property to religious or charitable§ uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.*†

Section 115 — Note 1 (contd.)

(9) See Notes under S. 15 of the A. I. R, Commentary on the Transfer of Property Act, 1882.

Section 117 — Note 1

[1] See Notes under S. 17 of the A. I. R. Commentary on the Transfer of Property Act, 1882.

(2) This section before its substitution in 1892 did not apply to the Hindus. For the law before the substitution see the following cases. AIR 1920 Cal 969 (972)=47 Cal 76. (A direction in a Hindu will to accumulate the surplus income of the devised property with the gift of the accumulation is not fundamentally bad; it only fails if it offends some independent rule of Hindu law.) * (1909) 34 Cal 5 (11). (Direction to accumulate is not per se illegal.) * (1897) 24 Cal 589 (609, 610) * (1879) 6 Moo Ind App 526 (536) (PC) * (1885) 12 Moo Ind App 41 (61) (PC).

(3) Clause in a codicil to the effect that the will is not to have any effect beyond the same being proved for at least two years from the arrival of the news of the testator's death except for payments to some named persons : Held that the words that the will shall not have any effect was not a direction to accumulate the income from the estate but only meant that no payments were to be made except to the persons specified until at least for two years from the date of the arrival of the news of the testator's death. (1913) 40 Cal 192 (206).

SECTION 118 — SYNOPSIS

1. Object and scope.
2. "Nearer relative."
3. Religious or charitable uses.
4. Doctrine of cy pres — Applicability.
5. Twelve months.
6. Withdrawal from custody — Effect.

1. Object and scope. — (1) The intention of the Legislature in enacting S. 118 was to prevent death-bed bequests to charitable trusts by persons having near relatives, the section must be construed in a sense which is in harmony with that intention, and so as to give a real meaning to each part of the section, if that can be done without doing violence to the plain language thereof. AIR 1941 Rang 305 (313) = 1941 Rang L R 410 (DB).

(2) The bequest may be a direct bequest or a contingent bequest. So long as it is a bequest to charity the section is wide enough to make it applicable to bequests of any kind. AIR 1943 Bom 317 (318) (DB).

(3) But before a bequest to charity can be held to be good the following conditions must be fulfilled. First the will must be executed not less than twelve months before the death of the testator; secondly, it must be deposited within six months from the execution in some place provided by law and thirdly, the testator has a nephew or niece or any nearer relative and he is alive at the time of the death of the testator. AIR 1943 Bom 317 (318) (DB) * AIR 1936 Bom 30 (38) (DB).

2. "Nearer relative." — (1) An adopted son may be "nearer relative" but wife is not. AIR 1923 Mad 131 (132) (DB).

Illustrations

A having a nephew makes a bequest by a will not executed and deposited as required—
for the relief of poor people;
for the maintenance of sick soldiers;
for the erection or support of a hospital;
for the education and preferment of orphans;
for the support of scholars;
for the erection or support of a school;
for the building and repairs of bridge;
for the making of roads;
for the erection or support of a church;
for the repairs of a church;
for the benefit of ministers of religion;
for the formation or support of a public garden;
All these bequests are void.

[1865—S. 105.]

[Cf: Transfer of Property Act (1882). S. 17.]

[*] Section does not apply to Hindus etc.

[†] This includes a woman.

[‡] Like father, mother, son, daughter, grandparents, grandson, granddaughter, great-grandson, great-granddaughter, brother and sister. A wife would not come within the section as she is not a 'relative' which signifies relationship by blood and not relationship by marriage.

[§] i. e. for the benefit of the public or some section thereof.

[*†] As to registration or deposit of wills see the Registration Act (1908). Ss. 40 to 44.

Section 118 (contd.)

3. Religious or charitable uses.—(1) "Charitable uses" do not mean those clauses of the will which define the investment and deal with the funds but means the same thing as "charitable purposes." 1901-2 Ch 640 (644, 646). (Continuing trust to provide dwelling for the poor at reduced rent held charitable.)

(2) The following cases are the instances of good and valid charitable bequests. AIR 1942 Rang 64 (65) = 1941 Rang L R 712 (720) (DB). (Bequest to Bishop Strachan's Home for Girls, Rangoon.)* (1851) 14 Beav 509 (524)=51 E R 81. (Bequest for the, benefit, advancement and propagation of education and learning in every part of the world.) * 1918-1 Ch 228 (231). (Bequest of income of fund to provide an annual treat or field day for the school children of certain parish.)* (1879) 4 Cal 443 (454) (DB). (Bequests for Annual Shradhs or anniversaries of testator, his father, mother and grandfather; feeding Brahmins and the poor, annual contributions and gifts to Brahmins; contribution towards the marriage of daughters of the poor of the testator's class and of poor Brahmins and for education of the sons of the poor and of other respectable class — Quaere — Whether bequeste to Pundits holding tols and for reading the Mahabharat and Poranas and for prayer of God are valid.)

(3) Bequest to the Lord Bishop to utilise its income in saying Low Masses for the repose of the souls of his father, mother and his own—Further direction that the Bishop should, out of the income, pay certain sums of money to the specified private persons. Bequest was for charitable uses, if not for religious and charitable uses. But as the will was not deposited for safe custody it was void. AIR 1956 Mad 412 (413) = ILR (1956) Mad 1139 (DB).

(4) The following cases illustrate what are not valid charitable bequests: (1913) 40 Cal 192 (209). (Trust for keeping graves of the testator, his wife and family in repairs—Expenses to be paid out of trust estate — Trust not a charity.) * (1902) App Cas 37 (42). (Residue of testator's estate to be applied for "such charitable or public purposes as my trustees think proper" — Direction held void for uncertainty.) * (1902) 26 Bom 632 (636). (A bequest for "some one or more charitable, educational and other philanthropic institution or institutions.) * (1863) 1 Bom H C R 71 (74). (Bequest to "Dharma" in Hindu bequest.) ** AIR 1963 Pat 430 (435, 436) (DB). (Bequest to charity for salvation of testator—Bequest held void for vagueness.)

(5) Bequest to organisations object of which was eradication of revealed religion and its replacement by reason—Bequest, held not hit by S. 118, as donees were not religious societies but were of a political nature. AIR 1949 Cal 533 (538)=ILR (1945) 1 Cal 532.

(6) The bequest need not be of an entire property exclusively for charitable or religious uses. The plain language of the section is that to the extent to which the bequest is for religious or charitable uses, the application of the section is attracted despite the fact that the bequest may be of a part of property or some interest in such property. In so far as there is any bequest to religious or charitable uses, to that extent the bequest is bad. A I R 1952 Bom 203 (204, 205)=ILR (1952) Bom 825.

(7) A church dignitary occupying the position and performing the functions and duties of a Bishop of a church is obviously a minister for religion and a bequest to him is for religious uses and attracts the provisions of S. 118. AIR 1952 Bom 203 (204, 205)=ILR (1952) Bom 825.

(8) Where a testator completely sets apart specific properties for specific purposes and describes the manner in which the income of these properties is to be employed the bequest

CHAPTER VIII

OF THE VESTING OF LEGACIES

119. Date of vesting of legacy when payment or possession postponed.*—Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will,† become vested in the legatee on the testator's death and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Section 118—Note 3 (contd.)
is not invalid merely because there is no express gift to any specific idol or because certain idols are non-existent. (1905) 1 Cal L J 605 (613, 614).

(9) An immediate gift to a charity for charitable purposes with a gift over, an event which may occur beyond the limit of perpetuities, to another charity is not illegal. (1913) 40 Cal 192 (212).

(10) Held that the will did not disclose a general charitable intention and therefore, on the failure of the first bequest to the samadhi as not being valid, the whole of the property would be available for the next bequest for the Nalvarguru Pooja. The whole purpose as well as the dominant intention of the testator was the worship in the samadhi. (1969) 82 Mad L W 237.

4. Doctrine of cy-pres — Applicability. — (1) Held doctrine could not be applied as the gift to charity failed owing to failure of condition precedent upon which it depended. AIR 1921 Cal 389 (391, 392) = 48 Cal 124 (DB). (Doctrine of cy-pres is that when a general intention of charity is manifest but the particular object of the bounty of the founder cannot be carried out literally, it must be carried into effect as nearly as possible. To attract its application an absolute declaration of intention to give to charity must be established.) * 1912-1 Ch 106 (110).

(2) Where the testator has manifested a general charitable intention, it should not fail to be carried out merely because the executors are all dead and the particular land in which a charitable institution is to be erected is not available for the purpose. (1909) 36 Cal 261 (265) * (1912) 36 Bom 29 (33) (DB).

(3) Where on the true construction of the will no paramount general intention can be inferred and the gift is particular in form, i. e., a gift for a particular purpose, the whole gift fails if it is found impossible to carry out the purpose. 1913-1 Ch 314 (321).

(4) Conditional bequest to charity—Failure of condition—No general charitable intention apparent: Held, condition on which gift was to take effect failed. 1909-2 Ch 1 (7, 8).

5. Twelve months.—(1) Under S. 118 and S. 42 et seq of the Registration Act three conditions have to be satisfied: first the will must be executed; secondly the will must be deposited within 6 months of execution with the Registrar of deeds; thirdly the testator must survive for a period of 12 months after the execution of the will. AIR 1941 Rang 305 (314)=1941 Rang L R 410 (DB).

(2) A charitable gift is not invalidated merely by the fact that the will containing the gift is confirmed and republished by a codicil made less than 12 months before the testator's death. (1913) 40 Cal 192 (204).

(3) Two successive wills — First will containing gifts to charities duly complying with requirements of S. 118. Subsequent will not revoking but only decreasing the gifts — Later will not executed before 12 months of testator's death. Held, gifts are not hit by the section. AIR 1931 Cal 138 (140) (DB).

6. Withdrawal from custody — Effect. — (1) If there is withdrawal from the safe custody the testator can redeposit the will but the requirement of this section as to duration of deposit and time of execution should be once again complied with. AIR 1941 Rang 305 (313) =1941 Rang L R 410 (DB).

(2) The word "deposited" does not mean the mere physical act by the testator or his agent of handing over a sealed cover to the Registrar. The document must continue to remain in the custody of the Registrar for a certain time. AIR 1948 Bom 304 (305).

SECTION 119 — SYNOPSIS

1. Scope.
2. "Vested in interest".
3. Postponement of payment or possession—Effect.
4. Bequest of prior interest—Effect.
5. Condition divesting interest.

1. Scope. — (1) Section 119, only deals with cases of legatees who are not entitled to the immediate possession of the thing or fund bequeathed, and has no application to a bequest of absolute interest which gives the legatee a right to possession immediately. ILR (1949) Cal 298 (310) (DB).

Illustrations

(i) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B and if he dies before C, his representatives are entitled to the legacy.

(ii) A bequeaths to B 100 rupees, to be paid to him upon his attaing the age of 18. On A's death the legacy becomes vested in interest in B.

(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(iv) A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.

(v) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(vi) A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes so subject, to his representatives.

[1865—S. 106.]

[Cf: Transfer of Property Act (1882), S. 19.]

[*] The section applies to Hindus etc,—See S. 57 & Sch. III.

[†] As for examble where the testator directs that the legacy shall vest in interest at a particular time or that the legatee shall take if he attains a specified age, but not otherwise.

Section 119 — Note 1 (contd.)

(2) Where the question is whether the interest of a person under a deed of trust is a vested as opposed to a contingent interest the determination of the question has to be guided generally by the principles recognised under Ss. 19 and 21, T. P. Act add Ss. 119 and 120, Succession Act. AIR 1957 S C 255 (261)=1957 S C R 77.

(3) The interest of a contingent legatee is transmissible in case of his death before happening of the contingency only where the interest vests in right before his death. ILR (1949) 2 Cal 611 (617).

(4) Will must be construed as whole. AIR 1966 Pat 40 (41, 42)=1965 B L J R 410 (DB).

2. "Vested in interest". — (1) The ordinary distinction between vested and contingent interest consists in the nature of the event or condition upon which the donee should take the property. If the event is one which must happen, it is a vested interest but if the event is uncertain which may or may not happen the interest is contingent. AIR 1933 Mad 885 (886) (DB). (Interest taking effect on termination of two life estates is vested one.)

(2) Will creating life-interest in favour of testator's two wives M and L and widowed daughter-in-law R and after their death his daughters J and K were to enter into possession of entire property absolutely — On construction of will, held that interest of two daughters vested in them on testator's death though possession was postponed till all life estate holders died — On J's death her half share passed on to her sons, defendants 1 and 2. AIR 1962 Pat 149 (152, 155).

(3) A devise or bequest in favour of a person in esse simply, i. e., without any intimation of a desire to suspend or postpone its operations confers an immediately vested interest. AIR 1938 Cal 466 (467) (DB).

(4) Where it is doubtful whether a condition is precedent or subsequent, the Court prima facie treats it as being subsequent; for there is a presumption in favour of early vesting. AIR 1938 P C 270 (275, 276).

(5) The existence of power of appointment does not prevent vesting of the remainder because where estate is subjected to a general power of appointment in the first taker with remainder over in default of such appointment, the power does not suspend the remainder from vesting. AIR 1937 Pat 163 (164) (DB).

(6) Residuary legatee's interest, though finally it may turn out to be nothing, is vested interest and can be attached in execution. AIR 1931 Pat 76 (76).

(7) Comparison of S. 98 with S. 106 (now Ss. 111 and 119 respectively) makes it clear that the title to the property bequeathed to a class of persons certainly vests in such of the persons of that class who are actually alive at the testator's death. It is because of such legal vesting of title that even the representatives of any of those dying since the death of the testator get a share in property, when time arrives for distribution. AIR 1933 Mad 885 (887) (DB).

(8) In substance there is not much difference in a trust to pay until the happening of a certain event and a trust to pay that is abrogated on the happening of that event. But legal effect in the two cases is widely different. In the first case, trust will fail altogether. In the second case, trust will remain and clause of abrogation will fail. AIR 1938 P C 270 (276).

[See also 1905-2 Ch 295 (300). (A devise to A when he shall attain a given age is contingent.)]

(9) Absolute bequest in favour of daughter after termination of life interest of wife — Daughter takes vested interest — Daughter predeceasing wife — After wife's death property passes to daughter's heirs. AIR 1962 Andh Pra 54 (57, 58)=(1961) 2 Andh W R 162 (DB).

(10) Partition deed between father A and son B giving A right to mortgage and lease but not to sell or gift over — B to get A's share in case of A not getting son by second marriage — A not marrying again—Held, that A got only life estate under partition deed and B was entitled to vested remainder. AIR 1965 Mad 193 (194, 195)=77 Mad L W 691 (DB).

Section 119 — Note 2 (contd.)

(11) Where the will after making certain bequests bequeathed the remaining properties to 3 persons equally to be taken by them after the testator's and his wife's deaths, it meant that the wife was given a life estate and not Hindu widow's estate and the vested remainder was given to other legatees. (1972) 1 Mad L J 417.

(12) The will of one R recited that after his death his daughter-in-law K should enter into possession and enjoy properties and that whoever got the properties after K's lifetime and whoever might be in possession of the properties by virtue of any alienation were bound to continue thanneer pendal dharmam in the local Pillair Koil. The will further directed that after lifetime of K her two daughters P and M should get the properties absolutely. Held that R intended to confer on the mother only a life-interest and not obsolute interest. But the interest which P and M got was not contingent but was vested as death of K was a certain event. AIR 1973 Mad 21 (24) = (1972) 1 Mad L J 481.

3. Postponement of payment or possession—Effect —[1] The mere fact that a legatee is not entitled to immediate possession of the thing bequeathed does not make it a contingent bequest. AIR 1933 Mad 885 (886) (DB).

(2) As a general rule, where a testator creates a particular estate and then goes on to dispose of the ulterior interest expressly in an event which will determine the prior estate, the words and description of such event occurring in the latter devise will be construed as referring merely to the period of the determination of the possession or enjoyment under the prior gift and not as designed to postpone the vesting. AIR 1938 Cal 466 (467) (DB).

(3) A testator gave all his property after the death of himself and his wife to his daughter A and his nephew B. B died after testator but before the death of his wife — Held B had vested interest on death of the testator which was transmissible to his heirs though possession and enjoyment was postponed. (1911) 33 All 558 (559) (SB).

(4) Hindu will — Bequest to testator's mother and wife for their lives without any power of alienation and after their death, to the sons of his sister who are now in existence as also those who may be born hereafter to be held in equal shares in possession and enjoyment by right of inheritance — Held; testator did not intend merely to declare right of inharitance but to give the sister's sons a vested interest in their shares at his death, postponing their possession and employment till the death of his mother and wife. (1911) 38 Cal 468 (473) = 38 Ind App 54 (PC).

(5) A dying leaving behind sons B and C, and a will under which B and C to get life-interest contingent upon satisfaction of certain conditions — After death of B and C their issue to enjoy property 'at proper time' — B dying leaving infant son D and C dying without issue — C's widow adopting E before D attains majority — Suit for declaration of his right under will by D — Held, though estate vested in D at B's death, the period of distribution arose 'at proper time' which meant date of D's majority — E being adopted before that date was entitled to half share. AIR 1937 Mad 835 (836, 837) (DB).

(6) Testator bequeathing all his real and personal estate to his wife absolutely—In the event of wife predeceasing testator trustees and executors empowered to create a fund in cash by selling and coverting into money real or personal property other than money and to hold that in trust and to divide the money amongst the several persons named in the will according to the shares given—Payment to be made when the legatees attained the age of twenty-one in the case of males and in the case of females when they attained that age or married — Wife predeceasing testator — Held that the legatees got a vested interest in their several shares upon the death of the testator. (1884) 6 All 583 (593, 597) (DB).

4. Bequest of prior interest — Effect.—[1] A bequest on the death of a life-tenant is bequest to take effect not on a contingency but on an event which must happen and is therefore vested. AIR 1947 Oudh 45 (60) = 21 Luck 463 (DB). (Bequest by A to his wife for life and then to his daughter's son B absolutely — B acquires vested interest from testator's death.) * AIR 1953 Nag 19 (21). (Will conferring life estate on one K and after K's death estate to go to plaintiff as reversioner — Plaintiff takes vested and not a contingent estate.) * AIR 1949 Mad 264 (265) (DB). (Where the property is devised to a person after the life of another the remainderman has a vested interest upon the death of the testator.) * AIR 1933 Cal 253 (256) (DB). (Bequest of absolute estate with intervention of two life-estates — Possession and not vesting is postponed.) * AIR 1929 All 102 (104) (DB) * (1905) 27 All 406 (409) (DB). (Remainderman can sue for injunction to restrain the life-estate-holder from committing waste.)

(2) Ordinarily the words "after the death of the life-tenant" operate to vest the estate both in the life-tenant and in the remainderman on the death of the testator. The ordinary meaning of vest is vested in interest. AIR 1940 Cal 202 (204, 205) = ILR (1939) 1 Cal 305. (Bequest to wife for life and after her death to vest in his son who may be then in existence—Vesting held postponed to death of wife — Son's interest held contingent and not vested within S. 119.) * AIR 1937 Pat 163 (165) (DB). (Life estate given to two persons by will with remainder to other person—Interest in the remainder is not a mere chance or possibility but vested interest which is transferable.)

(3) The fact that trustees are legatees to take after termination of life estate does not make any difference. If they predecease the life tenant, representatives of trustees take the interest. (1882) 4 Mad 124 (127) (DB).

(4) Person bequeathing property to his wife for her life and then to his three sons and son of his predeceased son — Sons of other sons who were alive not mentioned in will — Held that each group got vested interest on death of testator. AIR 1950 Mad 112 (113, 114).

(5) A Parsi devised house to his wife for life and then to his son A and after his death to his widow and issues if any and then to his another son B — A died in the lifetime of testator's wife and did not leave widow or child. It was held that B became entitled to the estate subject to life estate of his mother. AIR 1918 P C 205 (209) = 43 Bom 88 = 45 Ind App 257.

(6) Where a will confers life estate on a widow and vested interest in the sons after her death in equal shares the interest of son

120. Date of vesting when legacy contingent upon specified uncertain event.* — (1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

(2) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception. — Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Section 119 — Note 4 (contd.)

dying before widow passes to his heirs, but where an agreement between the brothers provides that they would take the property in equal shares, after step-mother's death, interest of brother dying before the mother, passes to his full brother by inheritance. AIR 1920 Cal 691 (692).

(7) Bequest to A, B and C in equal shares — A and B not to alienate and to keep property for lifetime — After A and B, their shares to go to C — C held got vested interest but A and B got only life estate — Death of C during lifetime of A and B — C's share devolves on his heir — Section 120 did not apply — Deaths of A and B were not uncertain events. AIR 1960 Punj 257 (260) = ILR (1958) Punj 1852.

5. Condition divesting interest.—(1) Interest in favour of wife and sons — Defeasance clause — On construction held, wife's interest was vested and indefeasible but son's interest vested and defeasible, AIR 1930 P C 7 (8).

(2) One G executed a will by which his wife was to take possession of the properties after his death and maintain herself from the income of the properties. After her death the properties were to go to his two sisters as owners. If however a child was born to the wife it was to be the owner of the properties. It was held that the two sisters took vested interest in the properties on the death of G which was liable to be divested by the birth of a child to the widow. AIR 1950 Bom 289 (292) = ILR (1951) Bom 203 (DB).

(3) Conditions are precedent or subsequent according as the performance of such condition is made to precede the vesting of an estate or their non-performance to determine an estate antecedently vested. ILR (1949) All 368 (380) (DB).

Section 120 — Synopsis

1. Contingent interests.
2. Exception.

1. Contingent interests. — (1) Where there is no gift but only a direction to transfer from and after a given event, the vesting would be postponed till after that event has happened, unless, from particular circumstances contrary intention can be collected. (1817) 2 Mer 363 (387) 35 E R 979 * (1905) 2 Ch 295 (298) * AIR 1925 P C 27 (28) = 52 Ind App 95 = 49 Bom 167.

(2) A bequest of legacy or an estate on a future contingent event is good under this section. AIR 1914 Cal 782 (784) = 41 Cal 642 (DB). (Hindu will — Widow authorised to adopt — Bequest to sister's son in case widow dying before adoption or adopted son dying before widow: Held, bequest to sister's son is good.)

(3) Where a legacy is payable only if and when a contingency occurs and if that contingency occurs in the lifetime of the testator, it cannot be claimed under the will. AIR 1930 Bom 191 (198) = 54 Bom 358.

(4) A bequeathing property to B — On B's death property to devolve on B's issue or in default of issue on C — C predeceasing B who died issueless: Held, sub-s. (1) and not (2) applied and C did not acquire any vested interest which could descend to his heirs. (1939) 20 Pat L T 90 (92) (DB).

(5) Under a will the testator bequeathed to A, B and C, equal shares in his estate. It was provided that A and B were not to alienate the property in any way except for the payment of share of the debt of the testator and were to keep the property only till their lives and for their maintenance. After the death of A and B their shares were also to go to C. Held (i) that the will gave to A and B only a life estate (ii) C's interest in the property bequeathed to him was a vested one, which devolved on his heir on his death even during the lifetime of A and B. This was not a case where the specified event was uncertain. It must be held that C's interest in the property bequeathed to him was a vested interest. AIR 1960 Punj 257 (260) = ILR (1958) Punj 1852.

(6) Deceased partner's share in assessee's business — Will by deceased partner — His share of capital to be kept on and to bear interest — Assessee himself to be entitled to such share after death of certain other legatees — Share held not to vest in assessee during their lifetime — Till then it must be treated as borrowed capital and assessee would be entitled to deduction of interest thereon debited to the firm. AIR 1947 Mad 279 (281, 282) = ILR (1947) Mad 648 (DB).

(7) The interest of a contingent legatee is transmissible in case of his death before happening of the contingency only where the interest vests in right before his death. ILR (1949) 2 Cal 611 (617).

(8) One of the features of a contingent interest is that if a person dies before the contingency disappears and before the vesting occurs the heirs of such a person do not get the benefit of the gift. AIR 1957 S C 255 (263) = 1957 S C R 77.

(9) The question whether the interest of a person is a vested or a contingent one the Court has to be guided generally by the principles recog-

Illustrations

(i) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die udder 18, or one of them attains that age.

(ii) A sum of money is bequeathed to A "in case he shall attain the age of 18", or "when he shall attain the age of 18". A's interest in the legacy is contingent until the condition is fulfilled by his attaining that age.

(iii) An estate is bequeathed to A for life, and after his death to B if B shall then be living; but if B shall not be then living to C. A, B and C survive the testator, B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other has happened.

(iv) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(v) A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she neither attains 18 nor marries under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.

(vi) An estate is bequeathed to A until he shall marry and after that event to B. B's interest in the bequest is contingent until the condition is fulfilled by A's marrying,

(vii) An estate is bequeathed to A until he shall take advantage of any law for the relief of insolvent debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of such a law.

(viii) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(ix) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(x) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition is fulfilled by the expiration of the five years without B's having married C, or by the occurrence within that period of an event which makes the fulfilment of the condition impossible.

(xi) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(xii) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(xiii) A bequeaths to B 500 rupees when he shall attain the age of 18 and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

[1865—S. 107.]

[Cf: Transfer of Property Act (1882), S. 21: S. 131 infra.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

Section 120 — Note 1 (contd.)

nised under Ss. 19 and 21, T. P. Act and Ss. 119 and 120, Succession Act. Such a question is one of intention to be gathered from a comprehensive view of all the terms of a document. Further the Court has to approach the task of construction in such cases with a bias in favour of a vested interest unless the intention to the contrary is definite and clear. AIR 1957 S C 255 (261) = 1957 S C R 77.

(10) Where under a Will, one of the three sons of the testator was given a life interest in the property and it was provided that on his dying without a male issue property was to devolve on the heirs of the testator and that son died without any male issue the date of his death would be the date when the ultimate bequest to the heirs of the testator became distributable and payable and not the date of death of the testator. The law to be applied while effecting distribution of the residue would be the earlier Hindu law as was applicable to Hindus on the date of death of the testator and not the Hindu Succession Act (1956).

The heirs of the testator who were alive on the date of death of the son would be the only heirs entitled to the distribution of the bequest and not the heirs who were alive on the date of death of the testator. The heirs so entitled have to be ascertained on the hypothesis that the testator had lived up-to the time of the death of the son. (1969) 82 Mad L W 349.

(11) Will creating life-interest in favour of testator's two wives M and L and widowed daughter-in-law R and after their death his daughters J and K were to enter into possession of entire property absolutely — On construction of will, held that interest of two daughters vested in them on testator's death though possession was postponed till all life estate-holders died — On J's death her half share passed on to her sons. AIR 1962 Pat 149 (DB).

2. Exception. — (1) If a share of a residuary estate is given to a person to be paid or transferred to that person on attaining a particular age and there is a maintenance clause providing for maintenance in the meantime out of the income of that share then the share is vested. 1903-1 Ch 448 (451)**(1888) 12 Bom 137 (147)** (1875) 19 Eq 286 (290, 291) **(1887) 34 Ch D 716 (720).

(2) Where the provisions in a will amount to a direction to spend a part of the income for the benefit of the legatee, it would be sufficient to bring the case within the exception. AIR 1923 Bom 96 (102) (DB). (Reversed in A I R 1925 P C 27, on another point.)

121. Vesting of interest in bequest to such members of a class as shall have attained particular age.*—Where a bequest is made only to such members of a class as shall have attained† a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

[1865—S. 108.]

[Cf: Transfer of Property Act (1882), S. 22.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

[†] That means 'shall attain' as in the illustration.

CHAPTER IX

OF ONEROUS BEQUEST

122. Onerous bequest.* — Where a bequest imposes an obligation† on the legatee, he can take nothing by it unless he accepts it fully.

Illustration

A, having shares in (X), a prosperous joint stock company and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies; B refuses to accept the shares in (Y). He forfeits the shares in (X).

[1865—S. 109.]

[Cf: Transfer of Property Act (1882), S. 127, Para. 1.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Anson, in his Law of Contract: defines obligation as a legal bond whereby constraint is laid upon a person or a group of persons to act or forbear on behalf of another person or group.

Section 120 — Note 2 (contd.)

(3) Direction to executor to spend income from fund for maintenance of family and if there was a surplus to spend it in certain other ways — No definite ascertained interest can be held to arise from the fund within the meaning of the exception. AIR 1925 P C 27 (28, 29)=52 Ind App 95.

(4) Interest in corpus given to unborn grandchildren on attaining 18 and on surviving their father—Gifts are subject to double contingency and exception does not apply. AIR 1944 P C 67 (70)=71 Ind App 93.

(5) Where corpus is not given to the legatee from the date of death but could be spent by executor exception does not apply. A I R 1925 P C 27 (28, 99)=52 Ind App 95.

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Section 121 — Note 1

(1) Where the gift was to a class of persons one of whom alone was alive at the date of the will the period when that class was to be ascertained was the period of distribution. The legacy could enure for the benefit of all those persons who were in existence at the death of the testator and all those who came in existence before the legacy vested in possession. That period was called the period of distribution. In such cases the members of the class entitled to take are not only those who were in existence at the date of vesting of title but also those who subsequently came into existence before the vesting of possession or period of distribution. AIR 1959 Mad 475 (478, 479).

(2) Where the words of contingency form part of the description of the class of persons to take, such as gift to those "who shall attain the age of twenty-one" the words must receive their natural construction and no estate vests in any one till he attains the prescribed age. (1881) 7 Cal 218 (223).

(3) In the case of words of contingency occurring in the description of persons to take, a mere gift over is not sufficient to change their meaning. (1881) 7 Cal 218 (224).

(4) A testator devised his property to trustees and directed "(1) that the dividends should be applied to maintain his children (2) and that the funds should be distributed when the children attain 21 years of age (3) and in case of the death of any child before attaining 21 years the shares shall belong to the survivors in the class" — Held, that the children dying before that age took no shares and that 21 years age of the legatee was the age of vesting and not of payment. (1888) 12 Bom 137 (148, 149).

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Section 122 — Note 1

(1) Section 122 contains the rule of election that where a gift consists of several things, some of which are burdened with an obligation the

123. One of two separate and independant bequests to same person may be accepted, and other refused.* — Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He will not by this refusal forfeit the money.

[1865—S. 110.]

[Cf: Transfer of Property Act (1882), S. 127, Para. I.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

CHAPTER X

OF CONTINGENT BEQUESTS

124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.* — Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations

(i) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(ii) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

(iii) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(iv) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death without children", to C. The words "in case of B's death without children" are to be understood as meaning in case B dies without children during the lifetime of A.

Section 122 — Note 1 (contd.)

legatee or donee to make his election either to accept the whole gift or not to accept anything at all. ILR (1971) Cut 493 (500).

(2) Bequest to testator's wife for her life and after her death to son if any adopted by her — In absence of adoption, property to pass absolutely to A provided he resided in testator's ancestral house — On failure of A to obey the condition to other relations on the same condition—Widow not adopting any son but selling the house—A joining widow in sale of house—Held, A's interest though absolute a condition of a residence was superadded to it. The condition was valid but as its fulfilement was rendered impossible by A by joining in the sale, A forfeited his interest. (1913) 17 Cal W N 39 (41) (DB).

(3) Ordinarily, the executor or the administrator would be the legal representative and the estate that is to be paid out to the legatees would be the estate minus the liabilities on it. In case, however, there is only one legatee and there is no executor or administrator to manage the estate, it may be taken that the estate that vests in him must be the estate minus all the liabilities on it and the legatee would be liable in respect of such causes of action that survive6 the deceased. A I R 1945 All 433 (439) = I L R (1946) All 1 (DB).

Section 123 — Note 1

(1) This section reverses the rule in (1834) 3 My & K 252 (254)=40 E R 96.

(2) When two distinct legacies or gifts are made by a will to one person he is, as a general rule, entitled to take one and disclaim the other, but his right to do so may be rebutted if there is anything in the will to show that it was the testator's intention that that option should not exist. (1883) 22 Ch D 573 (577) ** 1896 Ch 511 (516) ** (1886) 32 Ch D 408 (417, 418).

(3) Where, however, the question arises upon a single and undivided gift, such gift is a prima facie evidence of testator's intention to make the gift indivisible and the legatee has no option. He shall either take it all or none of it. (1883) 22 Ch D 573 (577) ** 1896-2 Ch 511 (516, 517).

Section 124 — Synopsis

1. Scope and applicability.
2. "Specified uncertain event."
3. "No time is mentioned."
4. Period of payment or distribution.
5. Event must happen before the period.

1. Scope and applicability. — (1) This section embodies the rule enunciated in (1852) 15 Beav 357 (362) = 21 L J Ch 324 which is however, considerably modified by later English

(v) A legacy is bequeathed to A for life, and, after his death to B, and, "in case of B's death", to C. The words "in case of B's death" are to be considered as meaning "in case B dies in the lifetime of A".

[1865—S. 111.]

[Cf: Transfer of Property Act (1882), S. 23.]

[*] This section applies to Hindus etc.— See S. 57 & Sch. III.]

Section 124 — Note 1 (contd.)
decisions (e. g. see (1874) 7 H L 388 (404).)**AIR 1915 PC 101 (103) =43 Ind App 12. (Affirming AIR 1914 Cal 782,**AIR 1933 Bom 34 (35) (DB).

(2) The reason of the rule is that when there is a gift followed by a contingent gift over the inclination of the gift over is to interfere as little as possible with the first gift; the second gift is therefore read as a gift in substitution and not in remainder. AIR 1920 Bom 281 (282).

(3) In order to apply S. 124 four things, must be present viz. (i) a fund bequeathed and a period of distribution (ii) a specified uncertain event on the happening of which the legacy is to take effect (iii) non-mention of any time for the happening of the said uncertain event and (iv) that the testator contemplated the happening of the uncertain event before the period of distribution. ILR (1954) 2 Cal 58 (66) (DB).

(4) Section 124 only applies, if without doing violence to the terms of the will, it can be held, as a matter of words, that the occurrence of the uncertain event prior to "the period when the fund bequeathed is payable or distributable" is alone within the contemplation of the testator. If the terms of the will make that construction of his words impossible the section then does not apply. AIR 1946 Cal 55 (59, 60) = ILR (1946) 1 Cal 1 (DB) ** AIR 1932 PC 269 (272) = 59 Ind App 419 ** AIR 1920 Bom 281 (282).

[But see AIR 1933 Pat 126 (127) = 12 Pat 18 (DB). (The intention of the testator is immaterial.) ** AIR 1926 Pat 356 (356) (DB). (The rule enunciated in this section is a rule of law and not a rule of construction.) ** AIR 1915 Cal 414 (415) (DB).

(5) In deciding upon the possibility or otherwise of the happening of the "specified uncertain event" before "the period of distribution." it is not open or permissible to refer to anything other than the language of the feasance clause in question. That clause alone will have to be textually construed and only where on such construction it can be held as a matter of words that the "possibility" does not exist the section would not apply. ILR (1954) 2 Cal 58 (68, 69) (DB).

(6) Applicability of the section should not be based on forced interpretation of the will as opposed to the natural meaning of the words used. AIR 1920 Cal 81 (82) (DB).

(7) The principle underlying this section cannot be applied as a rule of justice, equity and good conscience in construction of a will to which Succession Act does not apply. AIR 1933 Bom 34 (35) (DB). (Hindu will prior to 1927.)

(8) This section applies to bequests of all descriptions of property as there is no difference in India between real and personal property (1896) 23 Cal 563 (573) = 23 Ind App 18 (PC).

(9) This section applies only where the prior bequest is capable of taking effect and is ab initio void. If a bequest fails ab initio the principle laid down in S. 116 applies. (1906) 33 Cal 947 (964) (FB) ** (1896) 23 Cal 563 (573)= 23 Ind App 18 (PC).

(10) Section applicable to cases under Hindu Wills Act, which is not applicable to Punjab. AIR 1923 Lah 649 (650) (DB).

2. "Specified uncertain event." — (1) Gift not made contingent on the happening of an uncertain event — This section does not apply. (1911) 38 Cal 327 (333) = 38 Ind App 7 (PC).

(2) Uncertainty or certainty of event is with reference to time of its happening. AIR 1921 Mad 258 (268) = 44 Mad 446 (DB).

(3) Death simpliciter cannot be specified as uncertain event under this section as of all events death is the most certain. But the mere fact that no express or specific words of contingency are attached to the reference to death is not conclusive that the case is one of death, simpliciter and no qualification is indended. The qualification may be implied in other words of the will or in the words taken as a whole. AIR 1946 Cal 55 (60) = ILR (1946) 1 Cal 1 (DB).

(4) Where death is spoken of as a contingency it should be construed whenever possible, to mean death before the period of distribution i. e., when the gift is immediate, death before the testator, or when the gift is in remainder, death before the expiration of the particular estate. AIR 1946 Cal 55 (60) = ILR (1946) 1 Cal 1 (DB).

(5) Gift over in event of minor legatee not attaining full age is valid — Failure of the minor to attain full age is the uncertain event. AIR 1914 Cal 570 (571) (DB).

(6) Property bequeathed to one — Intention to dispose it of to another should not be imputed especially when later donee is described as related to the testator and not prior donee. AIR 1932 P C 269 (273) = 59 Ind App 419.

(7) Bequest in favour of B — In case a specified uncertain event happens, properties to go to agnates of testator as absolute owner — Legacy in favour of agnates cannot take effect unless that event happens, AIR 1970 Pat 144 (152, 157) = ILR 48 Pat 683 (DB).

3. "No time is mentioned." — (1) Section is applicable only where the time of the occurrence of an event is left uncertain, as where a contingent gift as made to depend upon the death of the legatee. AIR 1920 Bom 281 (283).

(2) Section does not apply if a period is specified in the will within which the contingent event is to happen. AIR 1932 P C 269 (272) = 59 Ind App 419.

(3) Testator giving his estate to his two sons half and half each taking vested interest in it at the death of the testator — Further direction that in the case a son dies issueless, his share to go over to the survivor — Held that the contingency was intended to happen after the death of the testator and as the time was thus specified in the will S. 124 did not apply — Further that the clause was a defeasance clause to which S. 131 applied. AIR 1931 Cal 499 (501) (DB).

125. Bequest to such of certain persons as shall be surviving at some period not specified.* — Where a bequest is made to such of certain persons as shall be survivingt at some period, but the exact period is not specified, the legacy shall go to such of them as are alive at the time of payment or distribution, unless a contrary intention appears by the will.

Section 124 — Note 3 (contd.)

(4) Absolute bequest to son with a direction added that in case son dies after the testator's death without marrying or if married without lineal heir, his share should revert equally to his sisters or their heirs — Son claiming legacy absolutely — Plea that direction was good under this section — Held, no time was fixed for the event to happen — The period of distribution was testator's death and gift to son became indefeasible at that date under this section. (1913) 37 Bom 644 (649, 650).

(5) Bequest to A for life and after A's death to B and C absolutely in equal shares with condition that in case B or C dies issueless, survivor to get entire property absolutely — Death of B issueless after A's death — Subsequent legacy in favour of C does not take effect as B died after the property was absolutely devolved on her. AIR 1972 S C 639 (641) = (1972) 1 S C J 553 ** AIR 1956 Pat 40 (44, 45) = 1965 B L J R 410.

4. Period of payment or distribution.— (1) Property bequeathed to A and in the event of his death without issue to B — Death of A issueless after testator's death — B takes an absolute estate. AIR 1933 Pat 126 (127)=12 Pat 18 (DB).

(2) The period of payment in the section is the period when the last payment which is not of an alternative character is directed in the will. AIR 1921 Mad 258 (268)=44 Mad 446 (DB).

(3) Word 'period' in S. 124 does not mean indefinite period after testator's death during which contingency may occur but lawful period for distribution by executors and "before the period" means "before tha commencement of such period." AIR 1933 Pat 126 (127) = 12 Pat 18 (DB).

(4) The ordinary rule of construction where testator has given an absolute gift to a legatee and then has made a gift simpliciter on a contingency of death is that he was referring to death before the period of distribution, that is the death of the testator. AIR 1915 Cal 414 (415) (DB).

(5) Bequest to daughters and brother's daughters in equal shares as "maliks" — In the event of any of the daughters dying childless, her share to devolve in equal shares on the surviving daughters — Daughter dying long after testator's death — Held as no time was fixed by the will death of the daughter could refer only to death at the period of distribution i.e., the date of death of the testator and that section did not affect the bequest. (1897) 24 Cal 406 (410) (DB).

5. Event must happen before the period. — (1) Estate divided equally between two sons — Another clause directing the half of one son to be given to such son's son if one be born on his attaining his full age—Under the terms of will, half the estate conveyed vested in the son a morte testatoris — Gift over to son's son was void under the section son having survived his father. AIR 1914 P C 18 (20)=42 Ind App 71.

(2) Legacy to "my three sons; if any one dies childless, survivors shall be entitled to whole"— All sons living at testator's death—Gift to three sons becomes indefeasible on that date, executory gift not taking effect afterwards. (1896) 23 Cal 563 (571, 572)=23 Ind App 18 (PC).

(3) Under will testator's daughter on attaining majority to get property and if she be not there eldest son of executor to get it — Death of daughter after attaining majority — S. 124 applies — Bequest over to executor's son does not take effect. AIR 1946 Cal 55 (62)=ILR (1946) 1 Cal 1 (DB).

(4) Gfft of absolute estate subject to defeasance — Gift over is void if the defeasing event does not happen at close of life in being and subsequent donee is not living then. AIR 1933 Bom 34 (36) (DB).

(5) Hindu testator creating adopted son as full proprietor — Gift over to nephews if son dies issueless during testator's widow's lifetime —Son dying without issue and without disposing of property during testator's widow's life time — Held (1) gift over to nephews failed (2) adopted son was absolute owner and gift over was repugnant (3) it created succession unknown to Hindu Law and (4) contingency of son's death should have happened during testator's life under S. 124. AIR 1929 Cal 145 (148) (DB).

(6) The testator devised his estate to his widow and his two daughters-in-law and then provided as follows : "In case the said three Musammats die, M son of R my brother's son shall be the heir and possessor of the properties." All the three ladies survived the testator—Held, that S. 124 would operate so as to bar the right of M to take under the will. AIR 1926 Pat 356 (356) (DB).

(7) A Hindu will providing "if my wife dies before, my daughter shall get" etc. — Wife not dying before the testator — This section bars daughter's legacy. AIR 1917 Cal 258 (260)=44 Cal 181 (DB).

(8) Where testator leaves will devising absolute estate to female with proviso that in the event of her death, his nephew is to be heir and no time was specified for the happening of that event, gift over to nephew will not take effect; the female will take absolute estate in case she survives the testator. AIR 1934 Pat 398 (411) =13 Pat 550 (DB).

Section 125 — Note 1

(1) Hindu will—Self-acquired property divided and given to two sons—Further clause that should either of two sons die without having had any male issue the survivor to take whole property appertaining to the share of the deceasad, after undertaking the expenses of maintenance of his widow and of maintenance and marriage of his minor daughters—Death of testator leaving both sons surviving—Elder dying leaving widow and daughter — Survivor held entitled to share of the deceased subject to obligations of main-

Illustrations

(i) Property is bequeathed to A and B to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.‡

(ii) Property is bequeathed to A for life, and, after his death, to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(iii) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator, B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(iv) Property is bequeathed to A for life, and, after his death, to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.§

[1865—S. 112.]

[Cf: Transfer of Property Act (1882), S. 24.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Survivorship prima facie refers to the point of time mentioned in the gift in nearest juxtaposition with the words.

[‡] Here the testator's death is the 'time of distribution.'

[§] Here survivorship refers to the last antecedent i.e. the death of the legatee dying first.

CHAPTER XI

OF CONDITIONAL BEQUEST

126. Bequest upon impossible condition.*—A bequest upon an impossible† condition is void.

Illustrations

(i) An estate is bequeathed to A on condition that he shall walk 100 miles in an hour. The bequest is void.

Section 125 — Note 1 (contd.)

taining his widow and daughter. AIR 1914 P C 60 (62) = 38 Bom 399.

(2) Survivors or survivor, meaning of. 1919-1 Ch 138 (145, 146;**1906-1 Ch 47 (54). (Held, survivors 'mean others.')

(3) A contingent interest will or will not be transmissible to the personal representatives of the legatee according to the nature of the contingency on which it is dependent. If the gift is to children who shall live to attain a certain age, or shall survive a given period or event, the death of any child pending the contingency has obviously the effect of striking the name of such deceased child out of the class of presumptive objects. Where, however, the contingency on which the vesting depends is a collateral event, irrespective of attainment to a given age and surviving a given period, the death of any child, pending the contingency works no such exclusion; but simply substitutes and lets in the legatee's representative for himself. AIR 1951 Cal 426 (430) = ILR (1952) 1 Cal 333.

(4) If at the time of the determination of the prior estate, whether it be by disclaimer, or because the person to whom the will purports to give it witnessed the will or for other reason, the gifts following on that estate are still contingent, there can be no acceleration because, the gifts being still contingent, it cannot be seen whether they will take effect. Income cannot be accumulated pending the contingency, for, by giving away the life estate, the testator has evinced an intention against accumulation, and therefore necessarily the income must remain undisposed of, at all events until the contingency following on the life interest happens. (1957) 1957-3 All E R 56 (58).

(5) A testatrix by her will gave and bequeathed, after making certain specific gifts and bequeathing pecuniary legacies, the remainder of her estate to be divided equally between her two sons and her step-daughter M with the direction "M's portion to be hers for life and then to be divided equally between her issue.' After the death of the testatrix M by a deed renounced and disclaimed all the life or other interests in the residuary estate of the testatrix. M was about fifty-eight years of age and was a widow and had three children—Held, that the principle of acceleration fell to be so applied as to give the fund in equal shares absolutely to the three children of M to the total and final exclusion of M's grandchildren and remoter issue who were non-existent. 1957-3 All E R 52 (54).

(6) Presumption as to survivorship—See Notes under S. 108, Evidence Act, 1872, ante.

(7) See also Notes under S. 24 of the A.I.R. Commentary on the Transfer of Property Act, 1882.

Section 126 — Note 1

(1) Where the performance of the condition appears to be the motive of the bequest the impracticability of the performance will be a bar to the claim of the legatee. In such a case the bequest does not take effect. AIR 1922 Cal 116 (117)=48 Cal 1100 (DB).

(ii) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

[1865—S. 113.]

[Cf: Transfer of Property Act (1882), S. 25.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Physically or legally.

127. Bequest upon illegal or immoral condition* — A bequest upon a condition, the fulfilment of which would be contrary to law or to morality† is void.

Illustrations

(i) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(ii) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

[1865—S. 114.]

[Cf: Transfer of Property Act (1882), S. 25.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Morality contemplated is that which is generally accepted by the civilised world, and not what is moral according to the subjective opinion of the Judge.

Section 127 — Note 1

(1) Even though the provisions of the section are not applicable to Hindus living in the muffussal the principle contained therein is applicable as a rule of equity and good conscience. (1900) 23 Mad 613 (615, 616) (DB).

(2) If the matter of the condition tend to provoke or further the doing of some unlawful act or to restrain or forbid a man the doing of his duty, the condition for the most part is void. Such conditions are against the liberty of law, and therefore void as well as against the public good. 1908-1 Ch 383 (387).

(3) According to English law, if a condition subsequent which is to defeat an estate is against the policy of the law the gift is absolute, but if the illegal condition is precedent there is no gift. (1888) 39 Ch D 116 (129, 130).

(4) In determining whether a condition is void or not the Court ought to ascertain whether its fulfilment necessarily involves any act or conduct contra bonos mores or against the welfare of the State. If it does not it is valid even though its fulfilment is capable of being brought about by acts and conduct opposed to the public welfare. 1919-2 Ch 305 (311, 312).

(5) Where there is any condition the object of which is to determine and divest, upon the happening of the specified event, estates or interests antecedently vested, and that condition is void as being contrary to public policy the gifts will be absolute both as regards the real and personal estate. 1908-1 Ch 383 (386).

(6) Where there is an unconditional gift it is complete at the time when the actual transfer takes place and the parties could not afterwards import a condition. Even if it were otherwise —assuming a condition, and an immoral condition—it would be the condition that is immoral and not the consideration and the gift to which an immoral condition is attached remains good while the condition is void. (1884) 6 All 313 (321) = 11 Ind App 44 (PC). (2 All 433, Affirmed.)

(7) Any provision which tends to deter person from entering the naval or military services of the country is against public good and therefore void. 1908-1 Ch 383 (387).

(8) Where a bequest was made conditional on the continuance of the immoral relations between devisee and the testator the bequest becomes void. (1900) 23 Mad 613 (615) (DB).

(9) All estates of inheritance created by gift or will so far as they are inconsistent with the general law of inheritance are void as such. (1872-1873) 3 Ind App (Sup Vol) 47 (66) ** AIR 1939 Cal 226 (228, 229) = ILR (1939) 1 Cal 63 (DB).

(10) Post nuptial settlement — Husband assigning lands to trustees for the payment of rents to his wife so long as she continued to co-habit with him or remained his widow—The condition restricting wife's enjoyment of the rent during the time she continued to co-habit is not void. 1904-1 Ch 470 (479).

(11) Will providing that the legatee should take nothing if she married before the death of her father—Prohibition is valid and not contrary to law and morality. AIR 1932 Cal 350 (351)=59 Cal 102 (DB).

(12) Every condition which does not directly or indirectly import an absolute injunction to celibacy is a lawful condition. Therefore an injunction to ask consent is a lawful condition as not restraining marriage generally. (1798) Dick 712 (721)=21 E R 448.

(13) A parent or appointor disposing by will either of his own property or of any property over which he has a power of appointment is perfectly justified in making a provision in favour of such of his children as shall not embrace a particular faith and such a provision to that effect is not void as opposed to public policy. (1879) 11 Ch D 959 (967).

(14) Conditions in the will that no ordained minister or missionary or member of the Baptist Missionary Church should be allowed to be elected as deacon or to canvass votes for his election as such deacon and that fermented and unfermented wine should be kept at the communion service of the chapel and that old practices are to be observed are neither illegal nor impossible. (1913) 40 Cal 192 (209).

(15) The keeping of a tomb in repair is not an illegal object and no rule of law prohibits the enforcement of a condition creating a perpetual

128. Fulfilment of condition precedent to vesting of legacy* — Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations

(i) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(ii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(iii) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(iv) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(v) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(vi) A makes his will whereby he bequeaths a sum of money to B if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(vii) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

[1865—S. 115.]

[Transfer of Property Act (1882), S. 26.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

Section 127 — Note 1 (contd.)

inducement to do a thing which is lawful. (1913) 40 Cal 192 (208, 209).

(16) A defeasance clause in the will of a Parsi to the effect that in the event of any person entitled to any benefit under his will marrying a non-Parsi or a person not professing the Zoroastrian faith, the interest going to that person shall be deemed to have lapsed and shall go over to the person or persons who shall be entitled thereto as if such person had died before the testator, is perfectly valid. Such a condition is not in any sense "contrary to law or to morality", within the meaning of S. 121. AIR 1948 Bom 319 (320)=ILR (1948) Bom 509 (DB).

(17) Conditions in restraint of marriage, if general, are at least prima facie void. But in every case the Court must decide whether the motive in taking away a gift was to prevent marriage and promote celibacy. Where the motive was not to prevent marriage or punish the donee in any way for marrying but only to secure the proper fulfilment of the objects for which the gift was made the condition is not void. 1950-2 All E R 1073 (1076, 1078, 1079).

Section 128 — Note 1

(1) A condition precedent to a legacy could not be imported from outside into a will which gave the legacy. AIR 1946 Oudh 193 (204)=21 Luck 314 (DB).

(2) W B by will appointing his wife and two other executors and also appointing his wife the sole guardian of his children during their minority — Legacies to daughters on their attaining twenty-one or on marriage with the consent of guardian or guardians whichever should happen first — One of the daughters before attaining 21 marrying without consent of guardian, a sole guardian having died previously —Held that the principle that where a literal compliance with the condition becomes impossible without any default of the party it is sufficient that it is complied with as nearly as practicable did not apply to the case as guardian or guardians could have been appointed by the child or by the Court and then the requisite consent obtained. (1881) 18 Ch D 61 (65).

(3) By an agreement B agreed to pay Rs. 50 in cash every month during the life-time of A in consideration of A having proposed to make a bequest of a life interest to his wife and the remainder in favour of B and his sons. The agreement executed by B contained, inter alia, these words: "if I, the executant fail to perform the said contract, the said cousin (that is, A) has power to have the same performed by me, the executant, through Court." B, however, failed to make any payment to A in terms of the deed of agreement even though A executed the will and performed his part of the contract —Held that the payment of Rs. 50 per month to A during his lifetime did not constitute a condition precedent to the vesting of the legacy in favour of B and as A left the will unrevoked on his death the will became effective as his last will and testament and operated to vest in B an interest in the remainder as therein provided. AIR 1953 S C 205 (210) = 1953 S C R 913.

(4) By his will the testator had devised and bequeathed his properties to his trustees on trust for his son F absolutely if he should be living at the date of the testator's death, and '..... if the present war with Germany shall have been terminated and peace have been declared,' and added: "but if my said son shall predecease me or if such peace shall not have been declared at the date of my death my trustees shall hold the said property upon the following, trusts.' On 9th July, 1951, a notice

129. Bequest to A and on failure of prior bequest to B* — Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.

Illustrations

(i) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(ii) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's life-time. The bequest to C takes effect.

[1865—S. 116.]

[Cf: Transfer of Property Act (1882), S. 27.]

[*] This section applies to Hindus etc.—See S. 57 & Sch. III.

Section 128 — Note 1 (contd.)

was published in the London Gazette in these terms: 'It is notified that the formal state of war with Germany is terminated as from 4 p.m. today, 9th July, 1951,' which was before the death of the testator's son — Held, that the condition for which the will provided was satisfied and F became absolutely entitled to the property on 9th July, 1951. 1955-1 All E R 788 (791).

(5) Testatrix who died in 1935 gave her freehold house and grounds known as "Saint Johns," to her nephew, during his life and from and after his death to J if he should (1) survive her and have attained or should attain the age of twenty-five years or (2) die in her lifetime leaving lawful issue who should survive her or (3) survive her and die under the age of twenty-five years leaving such issue. By another clause she made a bequest of chattels to go with the house, and by another clause she bequeathed to her trustees a legacy of £6,000 upon trust to invest the same in their names in some of the investments authorised by law and to hold the legacy on terms similar to those to which the chattels were made subject. J died in 1944 having attained age of 21 years but never having occupied "Saint Johns." W died in December 1948 — Held, that "J shall occupy my freehold property" was a condition which was void for uncertainty, and—J became entitled to both, the chattels and maintenance fund. 1950-2 All E R 188 (190).

(6) Held that there was no gift to the plaintiff and there was only a direction to defendant to adopt plaintiff as son of testator and the intention of the testator was that plaintiff should take as adopted son and therefore, gift made to plaintiff was conditioned on his being adopted. AIR 1967 S C 207 (208) = (1966) 3 S C R 446. (1959 Andh L T 803, Reversed.)

Section 129 — Note 1

(1) The section which merely incorporates the rule of the English law provides that a gift over shall take effect on the failure of a prior bequest although the failure may not have occurred in the manner contemplated by the testator. AIR 1914 Cal 570 (571) (DB).

(2) The failure contemplated by S. 129, is the failure of a valid gift. When the gift is ab initio void the subsequent gifts also must fail. AIR 1942 Bom 155 (158) = ILR (1942) Bom 441.

(3) Testator bequeathing his property to his minor son and in the event of the minor dying after the testator to the testator's sister—Minor son predeceased the testator—Held that S. 129 did not apply to this case as it applied only to the prior gift failing altogether for want of an object. AIR 1935 Mad 119 (120).

(4) Where the prior gift failed ab initio by reason of its object never coming into existence the executory gift was held to have taken effect notwithstanding that it was intended to take effect in defeasance of the prior gift. (1906) 33 Cal 947 (963) (FB) ✠ (1905) 9 Cal W N 1033 (1044).

(5) A testator bequeathed his property in the following terms: "My wife is supposed to be in the family way: should she bring forth a male issue in that case he will be the sole heir of my property and effects. If on the other hand she is delivered of a female child all the expenses of her marriage and maintenance till that period should be defrayed from my estate. In case my son dies before attaining proper age all my estate and property should be taken possession of by my brother N." Testator's widow gave birth to a female child. Held that the clause which gave possession of property to N in the event of son dying before proper age was a clause which purported to give him the property and that the gift over to N took effect on the failure of the first gift in whatever mode the failure took place even though not in the precise manner expressed in the terms of the gift. (1888) 15 Cal 282 (289, 291) (SB).

(6) Failure of bequest due to legal invalidity —S. 129 applies. ILR (1949) 2 Cal 611 (616).

(7) By his will executed on 17-9-1885 the testator gives the A schedule properties to his three wives for life and a gift over to his then living daughter and her heirs. The B schedule properties were given to charity. Before the gift over in favour of the daughter could take effect she died. The testator had begotten two other daughters. Owing to these changed circumstances, the testator added a codicil on 31-7-1902 by which he directed that his three wives should after his lifetime, take both A and B schedule properties for their lives without power of alienation. The wives should maintain the daughters and get them married and keep the sons-in-law in the family itself. If any of his daughters should beget a male heir, all the properties of the testator should belong to that male heir. Till that male heir attained majority, all the wives of the testator should be his guardian. In case no male heir was born to any of

130. When second bequest not to take effect on failure of first.* —Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

Illustration

A makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him, the bequest to B does not take effect.

[1865—S. 117.]

[Cf: Transfer of Property Act (1882), S. 27. Para. 2.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

Section 129 — Note 1 (contd.)

his daughters, all the properties of the testator should go to the charity mentioned in the will. The testator died on 31-7-1902. The second defendant was born in 1912, to one of the daughters. Held that as the gift in favour of the grandson failed because of the rule in the Tagore case S. 130 applied and the second bequest (namely, to charity) could not take effect since the first bequest did not fail in the manner indicated by the testator. AIR 1960 Mad 283 (286)=ILR (1960) Mad 35.

(8) The testator's only next of kin was his mother and apart from her his nearest natural relations were his uncle E B, and E B's children. He appointed two of these children, to be executors of his will. By his will he gave a life interest only to his mother, and after her death he gave his estate to E B. The will then proceeded: "In the event of my said uncle E B dying in my mother's lifetime then I give my said real and personal estate to his children as tenants in common in equal shares." Held that the gift to E B was not conditional and there being no intestacy the testator's residuary estate became divisible equally between the children of E B. 1948-2 All E R 979 (982).

(9) Held that on a fair and plain reading of the will as a whole the testator intended to make a bequest first to S M for her own use and benefit and absolutely and forever and on failure of that bequest to make a bequest to her heirs, executors and administrators for their own use and benefit absolutely and forever. In the circumstances S. 129 came into play and not S. 130 and although the bequest to S M became void under S. 67, and did not fail in the manner which was perhaps in the contemplation of the testator the substitutional bequest must take effect. AIR 1956 S C 747 (753, 754)=1956 S C R 591.

(10) Applies to substitutional gift — Gift for some reason not taking effect—Testator making substitution to receive the same bequest though prior bequest may not fail in precise manner contemplated by testator—The bequest becomes substitutional. AIR 1970 Mad 471 (473)=(1970) 2 Mad L J 365.

(11) It is a general rule that in the case of a failure of a prior gift, the particular contingency must occur as specified in the will; else the gift over lapses. The rule laid down in S. 129 can be made applicable only 'as an exception' and in clear cases, where the Court looking at all the relevant circumstances of the case, including, of course, the will itself, comes to the conclusion that the testator must a fortiori have intended the disposition over to take effect in the event which has actually happened, although it is not the event which he has specified in his will as the one in which the gift over is to take effect. AIR 1969 Mad 217 (222, 223)=(1961) 1 Mad L J 108.

(Affirmed in AIR 1970 Mad 471.)

Section 130 — Note 1

(1) Property bequeathed to the minor son of testator and in the event of his death after the death of testator to the sister of the testator: Minor son predeceasing testator — Held that S. 130 applied to the case as the first bequest which failed had not failed in the particular manner indicated by the testator and therefore the sister was not entitled to succeed. A I R 1935 Mad 119 (120).

(2) Will bequeathing the residuary estate to the grandson, or grandsons who may be born to the son of the testator within ten years of the death of the testator—Gift over to granddaughters in the event of grandsons not being born as aforesaid—Grandson born within ten years of testator's death: Held that the gift to the grandson was void. AIR 1926 Mad 936 (938) (DB).

(3) The testator's only next of kin was his mother and apart from her his nearest natural relations were his uncle B and B's children. The testator appointed two of these children to be executors of his will. By his will he gave a life interest only to his mother and after her death he gave his estate (charged with the payment of certain legacies) to his uncle. The will then proceeded: "In the event of my said uncle B dying in my mother's lifetime then I gave my said real and personal estate subject to and charged as aforesaid to his children as tenants in common in equal shares." The mother predeceased the testator and B survived the mother but died during the testator's lifetime leaving children—Held, that the gift to the uncle was not conditional there was no intestacy and his residuary estate became divisible equally between the children of B. (1948) 2 All E R 979 (982).

(4) The testator gave the A schedule properties to his three wives for life and a gift over to his then living daughter and her heirs. The B schedule properties were given to charity. Before the gift over in favour of the daughter could take effect she died. The testator had two other daughters. So he added a codicil by which he directed that his three wives should after his lifetime take both A and B schedule properties for their lives without power of alienation. The wives should maintain the daughters and get

131. Bequest over, conditional upon happening or not happening of specified uncertain event.* — (1) A bequest may be made to any person with the condition super-added that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

(2) In each case the ulterior bequest is subject to the rules contained in sections 120, 121, 122, 123, 124, 125, 126, 127, 129 and 130.

Illustrations

(i) A sum of money is bequeathed to A, to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A dies under 18.

(ii) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(iii) A sum of money is bequeathed to A for life, and, after his death, to B, but if B shall then be dead leaving a son, such son is to stand in the place of B. B takes a vested interest in legacy, subject to be divested if he dies leaving a son in A's lifetime.

(iv) A sum of money is bequeathed to A and B, and if either should die during the life of C then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(v) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

[1865—S. 18.]

[Cf. Transfer of Property Act (1882), S. 28.]

[*] The section applies to Hindus, etc.—See S. 57 & Sch. III.

Section 130 — Note 1 (contd.)

them married and keep the son-in-law in the family itself. If any of his daughters should beget male heir all the properties of the testator should belong to him. In 1912 a male child was born to one of the daughters. Held that the gift under the will in favour of charity and any gift which could be spelled out in its favour under the codicil was a conditional gift. The gift in favour of the charity could therefore take effect only if the gift in favour of the grandson failed in the particular manner indicated by the testator. A I R 1960 Mad 283 (285)=I L R (1960) Mad 35 (DB).

(5) Where the bequest ex facie and in terms did not show an intention that the second bequest was to take effect only in the event of the first bequest failing in a particular manner namely, the death of the legatee before the death of the testator, S, 130 could not apply to this bequest. AIR 1956 S C 747 (753)=1956 S C R 591.

(6) Failure of prior gift — Gift over when can take effect - Intention of testator that gift over is to take effect even when contingency occurs in manner not specified in will, must be proved — Absence of such intention — S. 133, applies. AIR 1969 Mad 217 = (1969) 1 Mad L J 108.

(7) S. 130 is applicable to conditional bequest —Second bequest being conditional on failure of earlier event in specified manner — Second bequest does not take effect. A I R 1970 Mad 471 (473)=(1970) 2 Mad L J 365.

Section 131 — Note 1

(1) A legacy may be bequeathed to A and in case of his death before or after that of the testator to B by reason of S.131 even though such a case would fall outside the scope of S. 124. AIR 1932 P C 269 (272, 273)=59 Ind App 419.

(2) Section 131 deals with divestment of an estate which had already vested — Begquest to A for life and after A's death to B and C absolutely in equal shares with condition that in case B or C dies issueless survivor to get entire property absolutely — Death of B issueless after A's death — Held, subsequent legacy in favour of C does not take effect as B died after the property devolved absolutely on her. AIR 1972 S C 639 (641)=(1972) 1 S C J 553 * * AIR 1966 Pat 40 (44, 45) = 1965 B L J R 410 (DB).

(3) Termination or extinguishment of an estate is different from imposing of restrictions on mode of enjoyment of the estate. If the intention of testator or donor is to maintain an absolute estate and restrictions are only to restrict mode of enjoyment or manner in which absolute powers should be exercised, the provision is a repugnant one. But if the intention is to terminate or extinguish absolute estate, then provision is defeasance clause. The termination or extinguishment of an estate already conferred on happening of a contingency may be gift over or it may be defeasance simpliciter. (1965) 2 Ker L R 283 (291).

(4) Testator executing will leaving his estate half and half to his two sons — Any son dying sonless, surviving son to take his share: Held that S. 131 applied to the case and the clause of defeasance was valid. AIR 1931 Cal 499(501)(DB).

(5) A made a will of his self-acquired property in the following terms: "After my death my son L and my three daughters (S, G and T) will be 'maliks' in equal shares of my property... ——.....—If L, my son, because of his being dumb cannot be married and he dies childless then of the share of his property T, my said daughter, will become the owner" L got married but died childless. Held that the dominant

Section 131 — Note 1 (contd.)
intention of A was to benefit T and to confine the porperty to his own children. The defeasance clause to which estate conferred upon L was subject to was not opposed to any rule of law. It therefore came into operation and his share would go to T. AIR 1956 Punj 45 (46).

(6) The will in question, first allotted the properties to G with right to take patta, pay Government tax and jenmi purappad and collect all rents and enjoy absolutely (sampoorna avakasa). The will further provided that if G died without any male child, the properties were to devolve on other legatees absolutely. Held that the absolute estate created in favour of G was reduced to a mere life-estate on the non-happening of the event of the birth of a male child to him and the estate went over to the other legatees. AIR 1960 Ker 183 (186) = I L R (1959) Ker 1040.

(7) Will providing that M one of the two sons of the testator should give one half of the property to V the other son if he should turn to good ways and reside with M respectably after the testator's death—Testator died immediately—V living in amity with M for 2 or 3 years : Held that under S. 131 half the estate which vested in M became vested in V on the happening of the uncertain event contemplated by the will. AIR 1924 Bom 298 (299) (DB).

(8) Where absolute estate is granted to first donee in terms clear and explicit and where the intention of the testator to grant absolute estate is plain and unequivocal gift over of what remains at death of first donee cannot be construed as cutting down absolute estate to life interest—Where it is not clear from language used by testator whether interest granted to first donee is an absolute interest or a limitted interest, addition of a gift over indicates that the first donee should have no more than a limited interest. (1973) 14 Guj L R 45 (52 to 54) (FB).

[See also AIR 1960 Ker 183 (185) = I L R (1959) Ker 1040.

(9) A bequeathed a share of his property to his daughter S and to her children after her death. He further provided that in the event of S's death issueless the property should go to one S C. The will imposed no other restrictions on S in relation to the property. It was held that S took an absolute estate and that the further clause was inoperative, being repugnant to such an absolute estate. (1950) 55 Mys H C R 115 (120).

(10) Where the conditions found in a will are not conditions which follow an absolute bequest but the bequest itself is subject to those conditions the failure of the devisee to comply with those conditions deprives him of the bequest and confers it on the one entitled to take on such failure. Such conditions even if they are to be taken as subsequent conditions cannot be rejected as invalid, because the provisions of S. 131 recognise the validity of such conditions. 1954 All L J 180 (183).

(11) The devise, which gives an absolute right to a legatee in existence after the death of the widow who is given a limited interest, cannot be said to be one in contravention of Hindu law. Similarly it is also competent to a Hindu to make a grant of absolute interest defeasible on the happening of a certain subsequent event. AIR 1956 Hyd 153 (158) = I L R (1956) Hyd 107 (DB).

(12) On construing the provisions of a will held that the testator contemplated that he would be buried as Sanyasi in a Samadhi Matam and that the directions for dharmams in the later clauses of the will were all part of the testator's scheme for keeping alive his memory and did not disclose any independent charitable intent — As the testator never became a Yatra Sanyasi and was not buried in a Samadhi Matam it became impossible to give effect to the scheme of the will and all the trusts declared by the will failed. A I R 1950 P C 37 (38, 39). (AIR 1945 Mad 217, Reversed.)

(13) Bequest of entire estate for life to testator's three widows and after their death absolutely to daughter's son, if any, otherwise to daughter absolutely — Bequest of ten villages to testator's nephew R for life after death of three widows and after R's death to his male issue, if any, absolutely or otherwise to daughter — Testator dying leaving his three widows, daughter's son S and nephew R — On construction held that S would take entire estate after death of three widows subject only to a life interest in ten villages in favour of R and a further defeasance provision in event of R leaving male issue. A I R 1950 P C 70 (72) = 52 Bom L R 485.

(14) It is competent to a Hindu in making a will to make provisions that the estates which he creates and gives to the recipient may be divested or defeated by something which takes place after, provided that the event must happen immediately on the close of a life in being at the time of the gift and that the defeasance by way of gift over must be in favour of somebody in existence at the time of the gift. (1889) 16 Cal 383 (392) = 16 Ind App 29 (PC) * (1897) 24 Cal 834 (850) (SB) * (1863) 9 Moo Ind App 123 (135) (PC) * AIR 1920 Bom 281 (283) * AIR 1921 Bom 262 (264)=45 Bom 1058 (DB).

(15) A Hindu governed by the Dayabhag died leaving a will whereby he bequeathed his property in trust to defray and pay out of the income thereof the expenses of the maintenance of his son B. B's wife A and their son T and any other son or sons who may be born of them during their lifetime, during their respective lives. Subject to such right of maintenance the trustees were to hold the property for the absolute use and benefit of T or any other son or sons or B who may be living at testator's death or may be born within twenty years after the testator's death. In the event of T and any other son or sons of B as may be living or born as aforesaid, all dying without male issue him or them surviving then the property was to be distributed between the nephews and grand nephews : Held, that the gift to the grandsons who might be born after the testator's death was invalid but that did not make the gift to T and such other son or sons of B who might be living at the testator's death invalid. The gift over to the nephews and grand nephews did not infringe the rule against remoteness and took effect. A I R 1951 Cal 426 (429)=ILR (1952) 1 Cal 333.

(16) Testator after conferring absolute estate on sons providing that in the event of their dying sonless, their widows or daughters shall not get the property but only maintenance : Held that the proviso did not operate as a defeasance clause because it did not reduce the absolute estate into a life estate and was also repugnant to the grant of an absolute estate and

132. Condition must be strictly fulfilled.* — An ulterior bequest of the kind contemplated by section 131 cannot take effect, unless the condition is strictly fulfilled.†

Illustrations

(i) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go, to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(ii) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(iii) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

[1865—S. 119.]

[Cf. Transfer of Property Act (1882), S. 29.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

[†] Conditions subsequent are construed with great strictness, as they go to divest estates already vested.

Section 131—Note 1 (contd.)
to Hindu law because it set up a line of inheritance unknown to Hindu law. AIR 1939 Cal 226 (228, 229)=ILR (1939) 1 Cal 63 (DB).

(17) Condition subsequent in defeasance of vested interest — To be construed strictly — Breach of condition — Clear and very strong evidence of its breach essential to operate as forfeiture of vested interest. AIR 1969 Ker 207 (211)=1968 Ker L J 749.

(18) A condition subsequent in restraint of marriage is only prima facie and not per se void. 1950-2 All E R 1073 (1076, 1079). (Held that as the motive for imposing the condition was only to ensure the ultimate disposition of the property according to the testator's desire the condition was not bad.)

(19) Bequest in favour of B—Condition superadded that if he as well as his male issue would die without leaving behind any legitimate male issue then agnates of testator would get properties as absolute owner—Event of death of B or of his son though specified was uncertain — Provisions of S. 131 attracted and ulterior bequest in favour of agnates is contingent and subject to rules contained in S. 124 — Unless B dies during life-time of testator, i. e., specified uncertain event happens, legacy in favour of agnates cannot take effect. A I R 1970 Pat 144 (151, 152, 157)=ILR 48 Pat 683 (DB).

[See also ILR (1959) 1 Cal 381 (385) (DB).]

(20) A clause in the will of a Parsee testator directed that if any person who was entitled to any benefit under the will of the testator should marry a non-Parsee or a person not professing the Zoroastrian faith then the interest going to that person should be deemed to have lapsed and should go over to the person or persons who would be entitled thereto as if such person had died before the testator. Two of the three daughters of a niece of the testator who were the legatees, married Hindus: Held that the clause was in the nature of a defeasance clause and S. 131 applied. The gift over was valid and came into operation as the two legatees had not complied with the condition. A I R 1948 Bom 319 (320)=ILR (1948) Bom 509 (DB).

(21) A clause of defeasance in order to be operative must contain express words or words of necessary implication of a gift over to a definite person or persons. (1905) 32 Cal 861 (869) (DB) * AIR 1952 Nag 327 (330)=ILR (1953) Nag 170 (DB).

(22) Failure of condition subsequent — Estate vests absolutely in legatee. A I R 1925 Lah 594 (595) (DB).

(23) The word 'interest' in S. 28, T. P. Act, has the same meaning as the thing bequeathed in S. 131 of this Act. A I R 1935 Pat 401 (403) =14 Pat 640 (DB).

Section 132 — Synopsis

1. Scope.
2. Condition of residence.

1. Scope.—(1) Hindu widow's power to adopt cannot be controlled by the will of her deceased father-in-law—Adoption contrary to the terms of will — Son's right to take under will as persona designata will be affected — His rights as grandson of testator however are not affected. AIR 1920 Bom 295 (295, 296) (DB).

2. Condition of residence. — (1) There is nothing in law to prevent a testator giving an absolute estate with the condition superadded that the legatee shall live in a particular house. (1913) 17 Cal W N 39 (41) (DB) * (1897) 24 Cal 646 (655, 656) (DB).

(2) To reside at a house means that a man is to be found at that house whenever he is wanted, that for that house he is rated to the poor rate, or is on the Parish or the Government rate-books, and that there he has a home. (1884) 25 Ch D 605 (610). (Devise of residence —Condition that legatee stayed at least for six months, not consecutively, in the house and took possession of the house within six months after the testator's death—Legatee performing condition as to possession but failing to stay for six months although he paid the taxes, kept a staff of servants and his son stayed on the place: Held he resided in the house and no forfeiture was incurred.) *(1907) 1 Ch 231 (236). (Residing means personally residing making the place as one's home. Using it as a place of rest and amusement is not residing in it.)

(3) A Hindu widow is not entitled to maintenance by residing elsewhere without a cause if she was directed by her husband to be maintained in the family house. (1891) 15 Bom 236 (237) (DB). (Ind App (Suppl Vol) 203 (PC), Foll.) *(1889) 13 Bom 218 (221) (DB). (Bequest to wife to the effect that if she comes to live at testator's place, she is to have one of the houses and Rs. 15 miscellaneous expenses — Wife residing

133. Original bequest not affected by invalidity of second.* — If the ulterior bequest be not valid the original bequest is not affected by it.

Illustrations

(i) An estate is bequeathed to A for his life with condition super-added that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.†

(ii) An estate is bequeathed to A for her life and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.‡

(iii) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 105 and A is entitled to the estate during his life.§

[1865—S. 120.]

[Cf. Transfer of Property Act (1882), S. 30.]

[*] Section applies to Hindus, etc.—See Sec. 57 & Sch. III.]

[†] Here the condition subsequent is impossible.

[‡] Here it is void being contra bonos mores.

[§] Here the gift over is void, by reason of being too late. So it would be where the condition subsequent is too vague for the Court to enforce it.

134. Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen.* — A bequest may be made with the condition super-added that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Section 132 — Note 2 (contd.)

at her parents — Suit by wife for arrears of maintenance : Held, she had just cause for residing apart and did not forfeit her maintenance.) *(1908) 8 Cal L J 489 (495) (DB).

(2) Will executed by Hindu in 1899 : Held, in absence of any rule of Hindu law, the validity and binding effect of a forfeiture clause must be determined according to principle involved in S. 121 of Act of 1865 (now S. 134). AIR 1942 Sind 145 (152) = ILR (1942) Kar 392.

(3) On construction of will, held that the bequest was in favour of testator's daughter's son of the entire taluqa including certain villages and was liable to be defeated so far as the latter villages were concerned, only if certain life tenant thereof died leaving any male issue. AIR 1947 Oudh 45 (61) = 21 Luch 463 (DB).

(4) A Hindu bequeathed certain properties to various persons including his brothers and provided that if any of his brothers raised any dispute regarding any of the provisions of the will and his sole right to the properties bequeathed and refused to acknowledge his right to make the will, he would forfeit any benefit given to him by the will. One of the brothers M instituted a suit in 1905 contesting the will. It was held that M incurred forfeiture of legacy by institution of the suit. AIR 1942 Sind 145 (152) = ILR (1942) Kar 392.

(5) Where according to the will the devisee was to have an interest so long as he resided in the house of the testator his maternal grandfather, it was held that the restriction was imposed as a condition and not as an indication that the interest created was a life estate and that the condition was perfectly legal under this section. AIR 1916 Cal 654 (656) (DB).

(6) See also Notes under S. 31 of the A. I. R. Commentaries on the Transfer of Property Act, 1882.

English cases

(7) In English law property, whether real or personal, can be validly limited to a person until marriage. The ambit of this rule is confined to conditions attached to devises or bequests of property and it does not relate to

Section 133 — Note 1

(1) When subsequent bequests are made upon happening of certain condition; fact that these ulterior gifts are not valid does not and cannot affect validity of prior bequest or gift. AIR 1935 All 1042 (1046) = 58 All 467 *(1900) 4 Cal W N 671 (677) (DB).

(2) Residue after meeting certain charges and expenses left by testator to his son to be dealt with at his pleasure till the son's sons attained the age of 21 — Son to divide it equally amongst them after retaining his share on their attaining that age : Held that gift to grandsons of the testator was void under Ss. 114 and 115 and that the son took an absolute estate. (1896) 20 Bom 450 (463) (DB).

Section 134 — Note 1

(1) Section 134 is a departure from English law, viz., that a gift may be coupled with a condition that on the happening or not happening of a specified uncertain event, it shall cease, and that to effectuate the defeasance a gift over is not necessary as required by English law. According to this section, if the condition subsequent is valid, if accompanied by a gift over, it will be equally valid without the gift over. In England it is treated as in terrorem. The condition referred to in this section is a condition subsequent which terminates an interest. It is not a conditional limitation which creates an interest in a third person. AIR 1942 Sind 145 (152) = ILR (1942) Kar 392.

Illustrations

(i) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(ii) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(iii) An estate is bequeathed to A, provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease, A does not go to England within the time prescribed. His interest in the estate ceases.

(iv) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(v) A fund is bequeathed to A for life, and, after his death, to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

[1865—S. 121.]

[Cf : Transfer of Property Act (1882), S. 31.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

135. Such condition must not be invalid under section 120.*—In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 120.

[1865—S. 122.]

[Cf : Transfer of Property Act (1882), S. 32.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

136. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject-matter to go over.*—Where a bequest is made with a condition super-added that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Section 134 — Note 1 (contd.)

limitations themselves. 1955-2 All E R 903 (906).

(8) In English law while a condition subsequent in general restraint of marriage is prima facie void, at any rate when imposed on a gift of personality, a condition in partial restraint of marriage is certaintly not void and is capable therefore of receiving legal recognition. The law however differed in its treatment of reality and personality when dealing with the further point as to how far and under what conditions such recognition should be given. For, whereas a condition subsequent in partial restraint of marriage was effective to determine the estate in the case of a devise of reality even without any new limitation to take effect on the forfeiture so that a residuary devisee or heir came in of his own right a condition subsequent in partial restraint of marriage when annexed to a bequest of personality was ineffective to destroy the gift unless the will in question contained an explicit gift over of the legacy to another legatee. And for this purpose a mere residuary bequest was not treated as a gift over. 1955-2 All E R 903 (903).

(9) A condition subsequent which may involve forfeiture must be such that the Court can see from the beginning. precisely and distinctly, upon the happening of what event the preceding vested estate is to determine. 1953-1 All E R 357 (359).

Section 135 — Note 1

(1) A testator devised his dwelling house and other property "to the eldest of the sons of F (except his son H) who should be a member of the Church of England and an adherent to the doctrine of that Church," and in case there is no such son of F, then on death of F the property was devised to W. Held, that the condition was void for uncertainty. 1953-1 All E R 308 (313).

Section 136 — Note 1

(1) Bequest to wife for life and after her absolutely to A provided A resided in the ancestral house — On A's failure to so reside, property to go to other relations on same condition — A joining with testator's widow in selling the ancestral home : Held, A by his own act rendered the performance of the condition super-added to his absolute estate impossible and hence incurred forfeiture of the same. (1913) 17 Cal W N 39 (41) (DB).

Illustrations

(i) A bequest is made to A, with a proviso that, unless he enters the Army, the legacy shall go over to B. A takes Holy Orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(ii) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger and thereby indefinitely postpones the fulfilment of the conditions. The bequest ceases to have effect.

[1865—S. 123.]

[Cf : Transfer of Property Act (1882), S. 33.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

137. Performance of condition, precedent or subsequent, within specified time. Further time in case of fraud.*—Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud,† in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.‡

[1865—S. 124.]

[Cf : Transfer of Property Act (1882), S. 34.]

[*] Section applies to Hindus etc.— See S. 57 and Sch. III.

[†] Fraud means error caused by a mendacious statement, express or implied. See also S. 25 of the Penal Code, 1860.

[‡] In the case of a condition precedent, when the Act is required to be performed within a specified time after testator's demise, the computation of the term will be exclusive of the day of his death.

CHAPTER XII

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT

138. Direction that fund be employed in particular manner following absolute bequests of same to or for benefit of any person.*—Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Section 137 — Note 1

(1) In case of conditional limitation, i.e., a devise over to some other person on happening of event, the Court cannot relieve against forfeiture if the event has taken place. (1907) 14 Ves Jun 341 (346, 347) = 33 E R 552.

(2) Even conditions subsequent to defeat vested estates must be construed strictly, and to work a forfeiture there must be shown a breach of a defined line of conduct which the parties concerned must reasonably have known would work a forfeiture. (1866) 7 H L C 707 (721, 723). (Legatee prevented by vis major from fulfilling condition — There is no forfeiture.)

(3) Neither ignorance, illness nor neglect on the part of the executor to inform the legatee can excuse him from not complying with the direction so as to entitle him to the gift. (1873) 16 Eq 92 (96) * (1874) 16 Eq 290 (297). (Want of knowledge of contents of the will.) * (1874) 18 Eq 243 (245).

(4) Where condition is a condition subsequent and the devisee was prevented from performing it by an act of God he or his representative will not be deprived of the bequest. 1903-1 Ch 749 (756).

(5) Where the legatee is prevented from performing the condition of the will by duress no forfeiture is caused by the failure. (1893) 20 Cal 15 (17) (DB).

(6) A condition subsequent which is impossible of performance will not bind the devisee and he need not comply with it in order to retain the bequest. 1904-1 Ch 252 (259).

(7) See also Notes under S. 37 of the A. I. R. Commentaries on the Transfer of Property Act, 1882.

Section 138 — Note 1

(1) Where absolute interest is granted, to first donee in clear and explicit terms, and where testator's intention to grant absolute estate is plain and unequivocal, gift over of what remains at the death of first donee cannot be construed as cutting down absolute estate to life interest. But where it is not clear from language used by testator whether interest granted to first donee is an absolute interest or life interest, addition of a gift over indicates that first donee should have no more than a limited interest. Where interest is granted to first donee in terms

Illustration

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.†

[1865—S. 125.]

[Cf : Transfer of Property Act (1882), Ss. 10, 11.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

[†] Even against express directions of the testator, for a Court cannot compel a legatee to do what he may undo the very next moment, as by selling the house or giving up the business.

Section 138—Note 1 (contd.)

which clearly and explicitly connote a life interest, question of considering whether it is an absolute interest or life interest does not arise. (1973) 14 Guj L R 45 (52 to 54) (FB).

(2) Section applies only where the bequest is absolute and not where it is limited to the life of the particular legatee. AIR 1930 Cal 731 (732) (DB) ** AIR 1940 Bom 76 (77) = I L R (1940) Bom 254 (DB).

(3) When a property is transferred absolutely it must be transferred with all its legal incidents and it is not competent to the grantor to sever from the right of property incidents which the law inseparably annexes to it — There is nothing in Hindu law which permits a departure from this principle. (1882) 4 Mad 200 (202, 203) (DB).

(4) A man cannot by gift inter vivos or by will give property absolutely to another and yet control his mode of enjoyment in respect of partition or otherwise. (1881) 6 Cal 106 (116)** (1876) 1 Cal 104 (107)**(1891) 15 Bom 443 (449). (Testator directing the net income during the joint lives of his wife and his daughter to be applied in payment of monthly allowances to them and the residue for the purpose of the wife and daughter and daughter's children in such manner as the trustees think proper—Directions amount to a gift of residue to use of wife and daughter in equal proportions absolutely—Direction that the trustees should control the manner of the expenditure held could not be given effect to.)

(5) If in a will a legatee is given in clear and unambiguous terms an absolute interest in possession, then it is not permissible to cut down that provision by reading it along with some subsequent provision in the will. In such a case the proper method of construction is to regard any subsequent provision which attempts to cut down or restrict the absolute interest, as void as being contrary to S. 138. I L R (1949) 1 Cal 298 (309).

(6) Where in a deed of gift or will an absolute estate of inheritance is created in favour of a person any subsequent clause which purports to restrict that interest is invalid and the donee or legatee takes an absolute estate as if the deed contained no such restrictive condition. The rule is the same even if the restriction is for a limited period only. AIR 1933 Lah 201 (202, 203)=14 Lah 353 (DB). (Testator after declaring his sons absolute owners in equal shares of his property restricting alienation or partition until the last of them became a major : Held that the restriction was invalid.)

(7) Where the terms of the earlier portion of a will were to the effect that the devisee was to enjoy the property absolutely or with all rights it was held that what was conferred on the devisee was an absolute estate and therefore the the restrictions on his power of transfer found in the latter part of the will had to be ignored as repugnant to the interest already created. AIR 1960 Ker 183 (185)=ILR (1959) Ker 1040 ** (1911) 13 Bom L R 141 (149) (DB) ** (1897) 24 Cal 406 (411, 412) (DB).

(8) A person bequeathed by will his properties to his sons in specific shares — By a second and third will he imposed conditions restraining partition personal possession of the specific share and alienation of the property allowing the sons to get only profits according to their specific shares : Held that these clauses which imposed restrictions were invalid and void and therefore did not affect the gift in first will. (1888) 15 Cal 409 (420, 421) = 15 Ind App 37 (PC).

(9) Bequest of estate absolutely with an added condition that in the event of legatee selling it she was to pay certain legacies : Held that the condition to pay legacies on sale was repugnant and void. 1896-2 Ch. 353 (356, 357).

(10) S. 138 which creates a right in the legatees to receive a fund without regard to the direction to which it refers prescribes no remedy and provides none and hence the District Judge has no power to order removal of executor and delivery of legacies on an application by legatees. (1967) 1 Mys L J 339 (340) (DB).

(11) By a will A bequeathed certain lands to G and then to her step-daughter in these terms : "Those lands should be enjoyed by G during her lifetime and after her lifetime they shall pass to her step-daughter S. If S has no issues, the same shall after her lifetime, pass to dowhitras and their issues". Held it created in favour of S an absolute estate and the clause which provided for the devolution on her death issueless being one in derogation of the absolute estate granted earlier was repugnant to that estate. AIR 1958 Andh Pra 447 (449) (DB).

(12) Where the material portion of a will was as follows : "You shall with all independent powers (serva swathanthra mulatho) enjoy the entire properties . . . . . Till your lifetime the properties that will remain thereafter shall pass to . . . . who are principal heirs but they shall not at all pass to your heirs," it was held that the will began by conferring absolute estate on the daughter and the subsequent words did not in any way affect the absolute nature of the estate. AIR 1955 N U C (Mad) 3156.

(13) Bequest to wife of a sum of money to be credited in the books of the shop of B and interest to be paid to her half-yearly—Money to be paid to her if demanded by her during her lifetime for good works—Otherwise money to be used by B, at his pleasure : Held that the testa-

139. Direction that mode of enjoyment of absolute bequests is to be restricted, to secure specified benefit for legatee.* — Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations

(i) A bequeaths the residue of his property to be divided equally among his daughters and directs that the shares of the daughters shall be settled upon themselves respectively for life and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

Section 138 — Note 1 (contd.)

tor's intention was to bequeath the money absolutely to his wife with directions as to its application or enjoyment and therefore the mention of good works did not limit the absolute right of the testator's wife to the money. (1898) 22 Bom 774 (777) (DB).

(14) A will contained the following directions as to the devolution of a fund "I hereby give devise and bequeath to my grand-children by my late daughter, also to my grandson and his step-brother in equal shares the benefit, interest and profit that shall arise and accrue from and out of the fund . . . ." and "I hereby direct that the fund shall be a continuing fund to all time and that the interest and profit derived therefrom shall be received and enjoyed as expressed in this will not only to the legatees to whom such has been bequeathed by me but the same shall be inherited by any child or children of them from time to time and from one generation to another in accordance with all legal rights": Held, that the words referring to children of the legatees in the latter clause were words of inheritance and not of purchase and that their effect was to give an absolute interest in the fund to the legatees. (1892) 15 Mad 448 (467).

(15) Grant of mirasi taluk to A for her life and then to her adopted son if she adopted one for his life — On the death of adopted son the estate to go to his sons, grandsons etc., by right of inheritance in the male line—Estate to revert to grantor or heirs after A's life in the event of A not adopting or where she adopted if the adopted son died sonless — Forfeiture also in case the estate was attached or sold: Held, on a construction of the grant that no absolute estate was created. (1908) 35 Cal 1069 (1073) (DB). (Case decided under the Transfer of Property Act.)

(16) Where there is a direction implying a postponement of the division of the residue for ten years or until the death of the last surviving sons the direction is inoperative the interest to which it attaches being absolute. AIR 1923 P C 122 (127).

(17) If an estate is given in terms which confer an absolute estate on the donee and then further interests are given merely after or on the termination of that donee's interest his absolute interest is not cut down and the further interests fail. AIR 1933 Lah 365 (368)=14 Lah 485 (DB). (Donees Hindu widows with full powers of alienation – Gift over will not curtail it.)

(18) If by the terms of a will an absolute interest in certain property is given to a legatee any subsequent provision postponing the legatee's right to possession of the property for any period beyond the majority of such legatee is contrary to S, 138 and as such is void. If however, during such period of postponed possession beyond minority of the legatee the income of the property is given to a third person; this rule has no application. AIR 1954 S C 41 (42).

(19) No condition could be annexed to a gift in fee simple which is repugnant to that gift even though the restraint is only for a limited time, (1884) 26 Ch D 801 (823). (Condition restraining sale during the lifetime of a particular individual held void.)

(20) It is true that a gift made in terms to a person absolutely can be reduced to a mere limited interest only by clear words cutting down the estate. But it must also be borne in mind that although the words in the first instance are absolute there may be words occurring subsequently which are sufficiently strong to cut down the first apparent absolute interest. Therefore where there is a dispute as to whether the interest conferred by a will is an absolute one or a life interest only it must be settled by reading the will as a whole paying particular attention to its own terms and avoiding too close comparisons with words used in wills in other cases. 1958-2 W L R 186 (191, 192).

(21) A bequeathed a share of his property to his daughter S and to her children after her death. He further provided that in the event of S's death issueless the property should go to one S C. The will imposed no other restrictions on S in relation of the property. It was held that S took an absolute estate and that the further clause was inoperative being repugnant to such an absolute estate. (1950) 55 Mys H C R 115 (120) (DB).

(22) Bequest by husband to his wife absolutely of movable and immovable properties — Direction in will that wife "shall" during her life time give 33 cents of land of her choice to testator's brothers—Direction is not a precatory trust –Direction is imperative and raises trust in favour of brother—Direction is not repugnant to the absolute estate in favour of wife. 1956 Andh W R 582 (584; 586).

Section 139 — Note 1

(1) This section is an enactment in statutory form of a principle laid down by the English decision in Mac and G 551 which is that where reading the will as a whole, the intention to confer an absolute estate in the first instance is expressed or implied, and following on that absolute estate there is a provision for settlement which in the event cannot be operative, then the words of prior intention prevail and the absolute estate takes effect notwithstanding the failure of the provision for settlement that fol-

(ii) A directs his trustees to raise a sum of money for his daughter, and he then directs that they shall invest the fund and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

[1865 — S. 126.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

140. Bequest of fund for certain purposes, some of which cannot be fulfilled.* — Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations

(i) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children. The son dies without having ever had a child. The fund, after the son's death belongs to the estate of the testator.

(ii) A bequeaths the residue of his estate, to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

[1865 — S. 127.]

[*] Section applies to Hindus etc. — See S. 57 & Sch. III.

CHAPTER XIII

OF BEQUESTS TO AN EXECUTOR

141. Legatee named as executor cannot take unless he shows intention to act as executor.*—If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy, unless he proves the will or otherwise manifests an intention to act as executor.†

Section 139 — Note 1 (contd.)

lows. AIR 1925 P C 244 (247) = 52 Ind App 310 ** AIR 1940 Bom 76 (77, 78) = ILR (1940) Bom 254 (DB).

[See also 1920-2 Ch 33 (37). (The rule in Mac and G 551 applies to realties as well.)]

(2) In India the words of this section must be followed as laying down the above principle. AIR 1925 P C 244 (247)=48 Mad 906= 52 Ind App 310.

(3) Where a will by an earlier clause merely directed apportionment or division and not distribution or disposition of property, and by the next clause effected the distribution giving the daughters an income for life followed by the gifts to their children, it was held the will did not confer upon the daughters any such absolute gift as is contemplated by this section but only a gift for life to which case this section did not apply. AIR 1925 P C 244 (247) = 52 Ind App 310.

(4) Direction to sell the property and the sale proceeds to be equally divided between two sons A and B of the testatrix —As regards half share of B, further direction that the amount of his share to be held in trust for B, interest to be given for B's maintenance and should B die leaving a widow or issue his share to be given to such widow or issue according as he may devise : Held that there was a gift over to the widow or issue of B and to that extent B's otherwise absolute gift was qualified, and further that should the gift over fail B's absolute interest remained unimpaired under this section. (1895) 19 Bom 770 (774) (DB). (Affirming on appeal 19 Bom 221.)

(5) Bequest in favour of testator's wife firstly in the event of her remaining testator's widow to her and testator's daughter and any other child of him through her, for their general benefit and after her death, children to take per stirpes—In case of wife's remarriage and children dying in her life time estate was given half to testator's half-brother and half to the wife, but in case the half-brother died without issue, the whole to the wife—Testator's children died before the widow who did not remarry — It was held that the testator intended by the first devise to give the estate to his wife and children jointly and that what followed was merely a restriction on the mode of their enjoyment. (1894) 21 Cal 488 (496) (DB).

(6) A gave by will certain land to his daughter and her son for enjoyment and the grandson was specially prohibited from alienating it and was to act under the directions of his mother. It was held that the mother and son did not take joint interest but that the mother took a life estate with the remainder over to her son and that the prohibition as to alienations took no effect in case of the son. (1898) 21 Mad 425 (428) (DB).

Section 141 — Synopsis

1. Scope.
2. "Manifests an intention to act."

1. Scope. — (1) The prohibition in this section is not confined to cases of bequests to executors as such but extends to any bequest, whatever be reason for which it is made; pro-

Illustration

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

[1865 — S. 128.]

[*] The section applies to Hindus etc. — See S. 57 & Sch. III.

[†] The Act does not say that if the executor proves he shall have his legacy, but that he shall not have it if he does not prove. This would be so even if he be prevented from proving because of bodily or mental infirmities. It is doubtful if an executor proves the will without a bona fide intention to execute the trusts, (but merely to entitle himself technically to his legacy) he would be allowed to have the legacy.

CHAPTER XIV

OF SPECIFIC LEGACIES

142. Specific legacy defined.* — Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Section 141 — Note 1 (contd.)

vided legatee is named as executor. AIR 1944 Mad 335 (337)=ILR.(1944) Mad 821 (DB).

[See also (1840) 11 Sim 202 (203, 204)=59 E R 851. (An executor being also a residuary legatee rule does not apply.)]

(2) This section implies that executor survives testator. It cannot apply to a case where executor predeceases testator and therefore does not affect the case contemplated by S. 96 (now S. 109) which can only apply to a case where legatee predeceases testator whether he has been named an executor or not. (1903) 13 Mad L J 351 (353) (FB).

(3) Under S. 141 it is not left to Court to decide whether legacy was given to person named in his character as executor. It is assumed that it was so given and the prohibition follows. Oral evidence cannot, therefore, be given to prove in what capacity the legacy was given. (1888) 15 Cal 83 (87).

(4) Appointment of executor in case he is adopted by testator or his wife. Held that C was not constituted an executor eo nomine but was to become an executor after his adoption and as he was not adopted he could not be the executor of the will. AIR 1960 SC 629 (632)=(1960) 2 S C R 810.

(5) After giving various legacies including one to executor by his name, the remainder or residue of the testator's property placed "at the discretion and at his own disposal" of the executor — Property held received by the executor not by virtue of any gift but simply as an executor and must be disposed of by him as such i. e., in his representative capacity and not for his own benefit. 1914-2 Ch 173 (181).

2. "Manifests an intention to act."—(1) Proving of the will when the person is in a position to prove it, is of course the best manifestation of his intention and if he failed to prove it the Court would require a very strong reason for the omission before finding that the intention existed. (1888) 15 Cal 83 (87).

(2) The cases where the executor has clearly shown an intention to act as such but has been prevented by some happening beyond his control from proving the will fall within this expression. AIR 1944 Mad 335 (337)=ILR (1944) Mad 821 (DB).

(3) Where the executor concurred with other executors in the directions for the funeral of the testator, also in paying certain sums for the burial fees, for making coffins and opening the vault it was held that he showed that he meant to act as executor and his death before he executed the will did not defeat his interest. (1817) 4 Ves 212 (216)=31 E R 110.

(4) An executor to whom a legacy was given was in Australia at the time of testator's death— He sent a power of attorney to England under which his agent administered the estate and also recovered certain rents — Executor died without proving the will, it was held that he had sufficiently shown his intention to act as an executor. (1869) 8 Eq 277 (282).

(5) Where the person named as executor was found to be always ready and willing to act and it was proved that after testator's death, he made arrangements for the cremation and shradh or borrowed or advanced the money necessary for those purposes it was held that there were sufficient manifestations of his intention to act as executor. (1888) 15 Cal 83 (89).

Section 142 — Note 1

(1) A specific legacy is in the first place a part of the testator's property whereas a general legacy may or may not be so and secondly it must be a part emphatically, as distinguished from the whole. (1875) 20 Eq 304 (308, 309).

(2) Property bequeathed exclusively to sons by testator — Decree obtained against one son— Attachment and sale before administration of his share in execution of his decree — Held that there was a specific legacy under S. 142 created by testator in favour of his two sons. AIR 1972 Ker 152 (155)=ILR (1971) 2 Ker 292 (DB).

(3) Where a testator gives his property generally by the words "all my property" or "all my estates" or "all that I have power over" and then proceeds to enumerate particulars such enumeration does not abridge or cut down the effect of the general words. (1876) 4 Ch D 435 (437).

(4) Clause in a will directing the payment in equal proportion to named legatees after realis-

Illustrations

(i) A bequeaths to B—

"the diamond ring presented to me by C":

"my gold chain":

"a certain bale of wool":

"a certain piece of cloth":

"all my household goods which shall be in or about my dwelling-house in M. Street, in Calcutta, at time of my death":

"the sum of 1,000 rupees in a certain chest":

"the debt which B owes me":

"all my bills, bonds and securities belonging to me lying in my lodgings in Calcutta":

"all my furniture in my house in Calcutta":

"all my goods on board a certain ship now lying in the river Hughli":

"2,000 rupees which I have in the hands of C":

"the money due to me on the bond of D":

"my mortgage on the Rampur factory":

"one-half of the money owing to me on my mortgage of Rampur factory":

"1,000 rupees, being part of a debt due to me from C":

"my capital stock of 1,000/- in East India Stock":

"my promissory notes of the *[Central Government] for 10,000 rupees in their 4 per cent. loan":

"all such sums of money as my executors may, after my death, receive in respect of the debt due to me from the insolvent firm of D and Company":

"all the wine which I may have in my cellar at the time of my death":

"such of my horses as B may select":

"all my shares in the Imperial Bank of India":

"all my shares in the Imperial Bank of India which I may possess at the time of my death":

"all the money which I have in the $5\frac{1}{2}$ per cent. loan of the *[Central Government]":

"all the Government securities I shall be entitled to at the time of my decease"

Each of these legacies is specific.

Section 142 — Note 1 (contd.)

ing a fixed deposit belonging to the testatrix in a particular bank — Investment not existing at the time of testatrix's death : Held that the legacy was specific as the testatrix was thinking in terms of her actual investments. 1935 Mad W N 275 (276, 277).

(5) Testator bequeathing rent by specific property to wife and daughters—Bequest is specific. AIR 1937 Bom 384 (385) ** AIR 1925 Mad 418 (420) (DB). (M bequeathing by will a garden and a bungalow to S along with other properties immovable and movable—S directed by will to pay half the net income therefrom to J for life and after her death to her children — Provision in the will that if the property should be sold one half of the same amount should be paid to J and the children that may be born to her: Held that the bequest in law was of the specific property itselt as a specific legacy to J.)

(6) A legacy of stock is a general and not a specific legacy. It is not correct to say that it is general where the sum happened to be a round sum and specific where it happened to be one which ran into pounds, shillings and pence. 1921-2 Ch 327 (330).

(7) Person having life interest in certain G. P. Notes bequeathing one third of her income to her servants and directing the maintenance of the Imambara under the belief that she owned the G. P. notes: Held that the bequest was specific. (1882) 8 Cal 1 (6) = 8 Ind App 117 (PC).

(8) Testator making oral agreements of sale leaving directions that sale proceeds when received should be paid towards the legacies in certain proportions : Held that legacies are not specific. AIR 1932 Bom 506 (507) (DB).

(9) Testator having a fixed deposit in a bank gifting a sum of Rs. 12,000 out of that to one of his sons and directing the executors to buy as soon as possible a house of the value of Rs. 12,000 in Madras : Held that the gift was a demonstrative gift and that the direction that it was to be paid out of a specified fund did not make it a specified gift. AIR 1942 Mad 17 (18).

(10) Testator making a gift by will of all sums of monay which he may possess or may be owing to him at the time of his decease together with all the furniture, farming implements, stock and crops belonging to a particular place by name "Asby Hall Estate" : Held that there was no specific gift. (1876) 3 Ch D 309 (313).

(11) Where legacies in the shape of maintenance and annuities payable out of estate were charged on a portion of testator's estate, legacies were demonstrative legacies, because maintenance and annuities were not equivalent to bequeathal of a specific part of the testator's property. AIR 1959 Cal 268 (270, 273) = ILR (1959) 1 Cal 477.

(12) Where by his will a testator bequeaths to a person an option to purchase his ordinary shares, fully paid, in a company at par value, i. e., at a price below their market value the beneficial interest represented by the difference between stated price and market value not being distinguished by testator himself is not a specific baquest. 1956-2 All E R 321 (322).

(ii) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Governmet promissory notes for 10,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(iii) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(iv) A bequeaths to B—

his house in Calcutta :
his zamindari of Rampur :
his taluq of Ramnagar :
his lease of the indigo-factory of Salkya :
an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.†

(v) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(vi) A bequeaths a sum of money—

to buy a house in Calcutta for B :
to buy an estate in zila Faridpur for B :
to buy a diamond ring for B :
to buy a horse for B :
to be invested in shares in the Imperial Bank of India for B :
to be invested in Government securities for B.

A bequeaths to A—

"a diamond ring":
"a horse":
"10,000 rupees worth of Government securities":
"an annuity of 500 rupees":
"2,000 rupees to be paid in cash":
"so much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.‡

(vii) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of property which he may leave in England. No one of these legacies is specific.§

[1865—S. 129.]

[*] The section applies to Hindus etc.—see S. 57 and Sch. III.

[†] Every bequest of immovable property is specific.

[‡] These are general bequests.

[§] These are demonstrative bequests.

143. Bequest of certain sum where stocks, etc., in which invested are described.* — Where a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will.

Illustration

A bequeaths to B—

"10,000 rupees of my funded property" :
"10,000 rupees of my property now invested in shares of the East Indian Railway Company" :
"10,000 rupees, at present secured by mortgage of Rampur factory."

No one of these legacies is specific.

[1865—S. 130.]

[*] The section applies to Hindus, etc.—See S. 57 & Sch. III.

144. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.* — Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration

A bequeaths to B 5,000 rupees five per cent. Government securities. A had at the date of the will five per cent. Government securities for 5,000 rupees. The legacy is not specific.

[1865—S. 131.]

[*] The section applies to Hindus, etc.—See S. 57 & Sch. III.

145. Bequest of money where not payable until part of testator's property disposed of in certain way.* — A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator has been reduced to a certain form, or remitted to a certain place.†

Illustration

A bequeaths to B 10,000 rupees and directs that this legacy shall be paid as soon as A's property in India shall be realised in England. The legacy is not specific.

[1865—S. 132.]

[*] The section applies to Hindus, etc.—See S. 57 and Sch. III.

[†] The distinction between specific and general legacies is important, for, as could be seen from S. 149 infra, if there be a deficiency in assets, a specific legacy will not be liable to abate with the general legacies. Moreover if it is to a person in being, and of an object producing income, it carries the income from testator's death (S. 349 infra). On the other hand, if the specific legacy fails by ademption or inadequacy of its object, the legatee will not be entitled to any recompense or satisfaction out of the general personal estate.

146. When enumerated articles not deemed specifically bequeathed.*— Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

[1865—S. 133.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

147. Retention, in form, of specific bequest to several persons in succession.* — Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations

(i) A, having lease of a house for a term of years, fifteen of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for fifteen years, C can take nothing under the bequest.

(ii) A, having an annuity during the life of B, bequeaths it to C, for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

[1865—S. 134.]

[*] The section applies to Hindus, etc.—See S. 57 & Sch. III.

148. Sale and investment of proceeds of property bequeathed to two or more persons in succession.* — Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may by any general rule authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Section 146 — Note 1

(1) Where there is a gift of the residue and the testator unnecessarily chooses to enumerate some particular things in that residuary gift that circumstance is not sufficient to constitute the things so enumerated specific gift. (1857) 1 Deg and J 438 (444) = 44 E R 793.

(2) The word "articles" cannot be construed as including items of immovable property. AIR 1925 Mad 418 (420) (DB). (Case decided under S. 133 of Act of 1865 corresponding to this section.)

Section 148 — Note 1

(1) Where property of a perishable nature is given to be enjoyed in succession the object of the testator can only be effected by converting the property into permanent annuities and giving each person in succession the dividend of the fund. But the testator can take the case of any particular bequest out of this rule and small indication of such intention is sufficient. Therefore the persons contesting the application of that rule and the Court which forbids that application should point out the words in the will which exclude the rule. (1851) 51 E R 214 (218) = 14 Beav 72 ** (1878) 8 Ch D 101 (121). (Beggallay L. J., dissenting.)

Illustration

A, having a lease for a term of years, bequeaths all his property to B for life, and, after B's death, to C. The lease must be sold, the proceeds invested as stated in this section and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

[1865—S. 135.]

[*] The section applies to Hindus etc.—see S. 57 and Sch. III.

149. Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.* — If there is a deficiency of assets to pay legacies,† a specific legacy is not liable to abate with the general legacies.

[1865—S. 136.]

[*] The section applies to Hindus etc.—see S. 57 and Sch. III.

[†] But when the assets not specifically bequeathed are insufficient to pay all the debts and the necessary expenses, then the specific legacies abate in proportion to their respective values. Though this has not been specifically provided in the Act, it seems to have been assumed in S. 328 infra.

CHAPTER XV

OF DEMONSTRATIVE LEGACIES

150. Demonstrative legacy defined.* — Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that—

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property,† it is demonstrative.

Section 148 — Note 1 (contd.)

(2) In construing a will which bequeaths property to two or more persons in succession it is the duty of the Court to consider whether or not the whole scope and context of the instrument does express an intention by the testator that the tenants for life should enjoy in specie that property which was his at the date of the will. (1875) 19 Eq 395 (415).

(3) The mere absence of any direction by the testator to convert his property cannot be construed to mean that it should be enjoyed in specie by the legatees in succession, (1851) 51 E R 214 (218) = 14 Beav 72 (83).

(4) A bequeathing his real and personal estate upon trust for sale and conversion and the proceeds to be held in trust for his wife till her life-time and after her death for his children — Trustees invested with power to postpone sale so long as they thought fit — Rents profits and income from such unsold real and personal estate to be paid to person or persons in the same manner as indicated in the will when the sale and conversion had been actually made — Held that the widow was entitled to the profits from the unsold business and not merely to a four per cent interest thereon. (1884) 26 Ch D 42 (46, 47).

Section 149 — Note 1

(1) If there are sufficient funds in the hands of the executor to enable the trustees to make distribution, the specific legacy has straightway to be handed over. The demonstrative legacy if any, would then have to be abated, if all could not be paid. AIR 1955 NUC (Bom) 5300.

Section 150 — Note 1

(1) Sections 137 and 140 of old Act (Ss. 150 and 153 of this Act) do not apply to Hindus but they embody the general principles of law applicable to wills as a whole. 1909 Pun L R No. 16 p. 78 (81).

(2) To determine whether a particular bequest is specific or demonstrative the only guiding factor can be the exact words used in the will and no other. AIR 1937 Bom 384 (385).

(3) A legacy does not become a demonstrative legacy merely because it has got to be paid out of the property of the deceased. What is essential is that testator must have directed legacy to be paid out of a particular fund which then by definition must mean a portion of total assets which he has. It is only then that it would be said to be a demonstrative legacy. AIR 1955 NUC (Bom) 5300.

(4) Where the legacies in the shape of maintenance and annuities payable out of the estate were charged on a portion of testator's estate, the legacy was demostrative legacy because maintenance and annuities were not equivalent to the bequeathal of a specific part of the testator's estate, but only a particular item of his property was made primarily liable for their

Illustrations

(i) A bequeaths to B, 1000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific, the legacy to C is demonstrative.

(ii) A bequeaths to B—

"ten bushels of the corn which shall grow in my field of Green-Acre":

"80 chests of the indigo which shall be made at my factory of Rampur":

"10,000 rupees out of my five per cent. promissory notes of the Central Government":

An annuity of 500 rupees "from my funded property":

"1,000 rupees out of the sum of 2,000 rupees due to me by C":

an annuity, and directs it to be paid "out of the rents arising from my taluk of Ramnagar".

(iii) A bequeaths to B—

"10,000 rupees out of my estate at Ramnagar", or charges it on his estate at Ramnagar:

"10,000 rupees, being my share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

[1865—S. 137.]

[*] The section applies to Hindus etc.—see S. 57 and Sch. III.

[†] Demonstrative legacy is liable to abate when it becomes a general legacy by reason of the failure of the fund out of which it is payable. It does not carry interest or income from the testator's death as is the case with specific legacy. (See S. 349 infra.)

151. Order of payment when legacy directed to be paid out of fund the subject of specific legacy.* — Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

[1865—S. 138.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

Section 150 — Note 1 (contd.)

payment. A I R 1959 Cal 268 (270, 273) = I L R (1959) 1 Cal 477 (DB).

(5) Legacies which are to be paid out of sale proceeds of lands with regard to which testator had made oral agreements of sale and left direction that they should be sold and after the money was received payments of legacies should be made in certain proportions are demonstrative legacies. AIR 1932 Bom 506 (507) (DB).

(6) If there is first, a gift and then a subsequent direction of the fund out of which it should be paid it would be demonstrative and payable out of the general estate, in the absence of existence of fund at the date of death of testator. AIR 1942 Mad 17 (18).

(7) The Queen of Oudh created a will where a clause said that in the event of income from landed properties not being sufficient to meet the purposes of the will her agent was to make up deficiency from "the pensionary allowances and interest on notes and etc., paid from the treasury." Another clause made provision for payment of Rs. 981 out of the allowance from Waslika and notes and etc., from the Government treasury to her relations, servants and other dependents as detailed in the will by her. The pension which was being granted to her by the Government was subsequently stopped — Held that the gift of annuities or stipends were to be regarded as demonstrative legacy and were payable out of general estate of testatrix in the event of failure of particular fund pointed out for their payment. (1892) 19 Cal 444 (452)=19 Ind App 83 (PC).

(8) The rule that in the case of demonstrative legacies, legatee is entitled to resort to general assets on failure of the source intended is subject to any direction to the contrary by testator. (1906) 29 Mad 155 (159) (DB).

(9) A legacy payable at a future day carries interest only from the time fixed for its payment. But where no time for payment is fixed the legacy is payable at, and therefore bears interest from the end of the year after the testator's death even though it be expressly made payable out of a particular fund which is not got until after a long interval. 1912-1 Ch 219 (225).

(10) Where the arrears of maintenance for a particular period are in their entirety bequeathed to the legatees under the will, the legacy is specific and not demonstrative. 1957 M P L J 139 (DB).)

(11) The Indian law is not different from the rule of English law under which demonstrative legacies also carry interest from one year from testator's death. The absence of any provision in the Indian Probate and Administration Act for the payment of interest on demonstrative legacies does not imply an intention to disallow interest on them. (1906) 29 Mad 155 (160) (DB).

CHAPTER XVI

OF ADEMPTION* OF LEGACIES

152. Ademption explained.† — If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.‡

Illustrations

(i) A bequeaths to B—

"the diamond ring presented to me by C";

"my gold chain";

"a certain bale of wool";

"a certain piece of cloth";

"all my household goods which shall be in or about my dwelling-house in M. Street in Calcutta, at the time of my death."

A in his life time,—

sells or gives away the ring;

converts the chain into a cup;

converts the wool into cloth;

makes the cloth into a garment;

takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(ii) A bequeaths to B—

"the sum of 1,000 rupees, in a certain chest";

"all the horses in my stable."

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

Section 152 — Note 1

(1) The doctrine of ademption applies to both special and general power alike. 1902-1 Ch 100 (124) ** 1901-1 Ch 398 (403).

(2) The question whether an appointment is defeated by reason of a change in investment where the appointer who is not disposing of his own property but is merely designating the persons who are to take property under an instrument which contemplates and authorises a change of investment, appoints a particular portion of the property to an object of the power, must depend upon the true construction of the testamentary instrument which is said to have exercised that power. In each case it is a question of intention which is to be gathered from the words used and if the language used is such that a devise of his own property would have failed by reason of some subsequent act an appointment under the special power in the same language must equally fail. 1902-1 Ch 100 (122, 123).

(3) When the testator had created an option to purchase property in favour of third parties subsequent to the execution of the will and when the option has been exercised by the purchasers after testator's death the legacy in favour of legatee is adeemed. AIR 1971 Mad 400 (402)= (1971) 84 M L W 243.

(4) Testator bequeathing income from certain shares specifically and the shares to the residuary legatee — Testator found lunatic subsequently — Shares sold under order in lunacy and proceeds invested in consols — Held that the conversion was a lawful conversion as if made by testator himself and therefore there was ademption of specific legacy. (1868) 5 Eq 555 (560).

(5) Bequest of specific plots to one legatee and other specific plots to other legatee—During lifetime of testator, testator allotted other plots in place of plots bequeathed under U. P. Consolidation of Holdings Act — Held, though there was conversion it was not conversion into property of different kind and change having been brought about by operation of law, S. 163 and not S. 152 applied. 1969 All L J 741 (DB).

(6) Testator bequeathing his movable and immovable property to his wife — Testator who had a mortgage decree taking mortgage bond from debtor in satisfaction of decree — Held that the mortgage bond satisfied also the description of property left by him and therefore no question of ademption under S. 152 arose. AIR 1941 Pat 18 (19) (DB).

(7) Debenture bonds given under will upon certain trusts — Testator converting them into Debenture stocks of the same company subsequently — Held that the bequest was adeemed as the stock was substantially a different thing from what was bequeathed and did not answer the description in the will. (1880) 14 Ch D 856 (858).

(8) Will bequeathing certain items including land — Will not containing any residue clause bequeathing residue of estate to legatee — Construction of house on land after execution of will but before death of testator — Held, on construction of will that interest in building did not pass to legatee as legacy was of vacant land — Site which was bequeathed under will, however, had been converted into property of different kind (i.e. house) within meaning of S. 152 and therefore legacy of site was adeemed. (1967) 2 An W R 83 (87).

(9) Mention of specific properties as part of residue — Legacy not specific—Residuary legacy must suffer diminution — The fact that testator had some interest in properties of specific legacy would make the rule in S. 152 not applicable. AIR 1963 Mad 405 (409)=(1963) 2 Mad L J 261 (DB).

(iii) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

[1865—S. 139.]

[*] Complete or partial extinction or withholding of a legacy (but not of a devise of real estate) by some act of the testator during his life, other than revocation by a testamentary instrument.

[†] The section applies to Hindus, etc.—see S. 57 and Sch. III.

[‡] Where the disposition of the object is not absolute, the legacy is not adeemed as where the testator pawns an article which he has specifically bequeathed: a right of redemption is still left in the testator and passes at his death to the legacy.

Where the legacy has been adeemed and the testator then confirms his will by a codicil, the legacy is revived.

153. Non-ademption of demonstrative legacy.* —A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind, but it shall in such case be paid out of the general assets of the testator.

[1865—S. 140.]

[*] The section applies to Hindus, etc.—see S. 57 and Sch. III.

154. Ademption of specific bequest of right to receive something from third party.*—Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations

(i) A bequeaths to B—
"the debt which C owes me";
"2,000 rupees which I have in the hands of D";
"the money due to me on the bond of E";
"my mortgage on the Rampur factory."

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(ii) A bequeaths to B his interest in certain policies of life assurance. A in his lifetime receives the amount of the policies. The legacy is adeemed.

[1865—S. 141.]

[*] The section applies to Hindus, etc.—see S. 57 and Sch. III.

Section 153 — Note 1

(1) It is a general rule of English law that demonstrative legacies will not fail, although the particular fund out of which they are directed to be paid be called in or be not in existence at the time of the testator's death; but will then be payable out of the general assets. The rule is the same if the particular fund though in existence cannot by reason of some provision of law of which the testator was apparently in ignorance be charged with the payment of the legacy in question. 1908 Pun Re No. 109, p. 501 (503) (DB).

(2) Section 153 can have no relevance where the legacies are specific. AIR 1960 Ker 1 (9) = ILR (1959) Ker 665 (FB).

Section 154 — Note 1

(1) J Who had an estate in Jamaica and certain consols and Bank stock in England, by his will directed the sale of the estate and if the proceeds were insufficient to pay off the expenses and legacies to sell off the consols and stock or such part of them as may be required for the purpose. He gave what may be remaining of the consols and stock after paying off the legacies and expenses to G and H equally. Subsequently he drew upon L and Co. to whom he had given a power of attorney before he executed the will to receive dividend and sell out his possession in consols and bank stock and authorised them to sell a portion of the bank stock and repay themselves. He died before L & Co., actually sold and repaid themselves. It was found that the general assets were sufficient to pay off the purposes mentioned in the will—Held that specific legatee was entitled to have the debt paid out of the general assets and that there was no partial ademption of the specific legacy. (1848) 64 E R 196 (197) = 2 De G & Sm 436.

(2) A bequeathing policy on his own life to trustees for paying off two debts owing from him and to pay the balance to J., his daughter — A paying off one of the debts himself before he was declared a lunatic — The committee of his estate paid off the other debt from out of his general estate in the absence of any order in lunacy — Held that J was entitled to get only the balance out of the money received on the policy after deducting the amount paid by the committee even though such payment was made without the sanction of the Court. (1887) 37 Ch D 310 (312).

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155. Ademption pro tanto by testator's receipt of part of entire thing specifically bequeathed.*—The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration

A bequeathed to B "the debt due to me by C". The debt amounts to 10,000 rupees. C pays to A 5,000 rupees the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

[1865—S. 142.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

156. Ademption pro tanto by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.*—If a portion of an entire fund or stock is specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

[1865—S. 143.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

157. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies.*—Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee, then, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives †[500] rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

[1865—S. 144.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

[†] Substituted for "5,000" by the repealing and Amending Act, 1927 (X of 1927), S. 2 and Sch. I.

158. Ademption where stock, specifically bequeathed, does not exist at testator's death.*—Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.†

Illustration

A bequeaths to B—

"my capital stock of 1,000 l. in East India Stock":

"my promissory notes of the *[Central Government] for 10,000 rupees in their 4 per cent. loan."

Section 158 — Note 1

(1) Testator bequeathing ordinary stock held by him in a Water Works Company — Subsequently and before his death company acquired by Metropolitan Board which issued Metropolitan water-board stock as compensation to the testator—Held, that latter stock did not pass under the will. 1907-1 Ch 665 (669, 670).

(2) R making specific bequest of certain stock in a Railway Company—R found lunatic subsequent to the creation of the will—Stock specifically bequeathed sold under an order in lunacy and proceeds invested in consols and credited to the lunatic under a separate account—Held, that the specific lagacy of stock was adeemed by the sale and that the consols fell into the residue. (1882) 22 Ch D 622 (628).

———

A sells the stock and the notes. The legacies are adeemed.

[1865—S. 145.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

[†] But see Ss. 163.165, which show that there is no ademption (a) where the stock specifically bequeathed is exchanged by act of law, (b) where the change is made without the testator's knowledge or sanction, (c) where he lends the stock on condition of its being replaced; and S. 168 supra which shows that the ademption is not irretrievable, and that legacy would be revived by a new purchase of similar stock by the testator.

159. Ademption pro tanto where stock, specifically bequeathed, exists in part only at testator's death.* — Where stock which has been specifically bequeathed exists only in part at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration

A bequeaths to B his 10,000 rupees in the 5½ per cent. loan of the Central Government. A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

[1865—S. 146.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

160. Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.*—A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause†, or by fraud, or without the knowledge or sanction of the testator.

Illustrations

(i) A bequeaths to B "all my household goods which shall be in or about my dwelling-house in Calcutta at the time of my death". The goods are removed from the house to save them from fire. A dies before they are brought back.

(ii) A bequeaths to B "all my household goods which shall be in or about my dwelling-house in Calcutta at the time of my death". During A's absence upon a journey the whole of the goods are removed from the house, A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

[1865—S. 147.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

[†] As for instance, for repairs, safe custody, or preservation from fire.

161. When removal of thing bequeathed does not constitute ademption.* — The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations

(i) A bequeaths to B "all the bills, bonds and other securities for money belonging to me now lying in my lodgings in Calcutta". At the time of his death these effects had been removed from his lodgings in Calcutta.

Section 160 — Note 1

(1) The principle in S. 160 does not apply when a contrary intention appears in the document. AIR 1920 Cal 192 (194) (DB).

Section 161 — Note 1

(1) The removal of goods out of a ship when the bequest was of "goods in that ship," it being a description so precarious, does not infer an intention to revoke the bequest. If the goods were removed to preserve them, in consideration of several contingencies and accidents, this would not defeat the legacy. (1749) 27 E R 1026 (1028).

(2) E of S before he went overseas devised all his goods and furniture to his wife that were at his house in R at the time of his death — His steward prevailed upon the landlord to accept a surrender of the lease of the house at R and removed the goods to another house of E. E approved of the act of the steward when informed of it by the latter—Held, that the wife was not entitled to the goods as there was no fraud or wrongful removal but that the steward acted under a general authority to do as he thought fit and that E had consented to what he did. (1866) 23 E R 1089 (1089) = 2 Vern 748.

(3) Will—Legacy—Exclusion from — Murder of testator by one of the beneficiaries under the will—Neither he nor any one claiming through him can claim under the will. AIR 1960 Ker 195 (196)=1959 Ker L T 1302 (DB).

(ii) A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house, At the time of his death the furniture is in the house at Chinsurah.

(iii) A bequeaths to B all his goods on board a certain ship then lying in the river Hughli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

[1865—S. 148.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

162. When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative, receives it.*— Where the thing bequeathed is not the right to receive something of value from a third person, but the money, or other commodity which may be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

[1865—S. 149.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

163. Change by operation of law of subject of specific bequest between date of will and testator's death.* — Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations

(i) A bequeaths to B "all the money which I have in the 5½ per cent. loan of the *[Central Government]". The securities for the 5½ per cent. loan are converted during A's lifetime into 5. per cent. stock.

(ii) A bequeaths to B the sum of 2,000 l. invested in Consols in the names of trustees for A. The sum of 2,000 l. is transferred by the trustees into A's own name.

(iii) A bequeaths to B the sum of 10,000 rupees in promissory notes of the *[Central Government] which he has power under his marriage settlement to dispose of by will. Afterwards in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.†

[1865—S. 150.]

[*] The section applies to Hindus etc.—See S. 57 and Sch. III.

[†] All cases of ademption arise from a supposed alteration of the testator's intention, and in the cases put, the conversion or transfer is not sufficient evidence of such alteration.

Section 163 — Note 1

(1) Where a change has occurred in the nature of the property even though effected by an Act of Parliament ademption will follow unless there has been a change in name or form only while the matter remains substantially the same thing. 1907-1 Ch 665 (671, 672).

(2) Certain shares in a company were specifically bequeathed to A,' The company was dissolved and the new company which took its place issued shares in lieu of those bequeathed, and share certificates were issued in the name of testator in ignorance of his death—Held, that the bequest was not adeemed as the amount of the testator's interest was practically the same' and was changed in form and name only. 1912-1 Ch 828 (830).

(3) Where in the place of property specifically bequeathed, some other property came to be substituted of equal valuation in the lifetime of the testator with the result that when he died what belonged to him was not the property which he had specifically bequeathed but the property which came to be substituted for it by virtue of provisions of U. P. Consolidation of Holdings Act, held, the change having been brought by operation of law necessarily attracts S. 163 and as such S. 152 can have no application. 1969 All L J 741 (DB).

164. Change of subject without testator's knowledge.*—Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the khowledge or sanction of the testator, the legacy is not adeemed.

Illustration

A bequeaths to B "all my 3 per cent. Consols". The Consols are, without A's knowledge,† sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

[1865—S. 151.]

[*] Section applies to Hindus, etc.—See S. 57 and Sch. III.

[†] Similarly if stock standing in the name of a trustee and specifically bequeathed is, without the testators knowledge or authority, sold or transferred into another Fund.

165. Stock specifically bequeathed lent to third party on condition that it be replaced.*—Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.†

[1865—S. 152.]

[*] The section applies to Hindus, etc.—See S. 57 and Sch. III.

[†] Because the testator continues to be the owner of the stock even after conditional lending.

166. Stock specifically bequeathed sold but replaced, and belonging to testator at his death.*—Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

[1865—S. 153.]

[*] The section applies to Hindus, etc.—See S, 57 and Sch. III.

CHAPTER XVII

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST

167. Non-liability of executor to exonerate specific legatees.* — (1) Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance created by the testator himself or by any person under

Section 164 — Note 1

(1) Testator having given specific thing becoming insane and remaining so till his death — Specific legatee who was an executor in concurrence with the widow an executrix of the will selling the property and depositing proceeds — Held that as the act of another without the knowledge and against the will of the testator resulting in a conversion of the specific thing cannot amount to an ademption of the specific bequest the specific legatee's claim to the proceeds cannot be rejected. (1866) 2 Eq 323 (328).

Section 166 — Note 1

(1) One S. I. had £ 400 of S. S. Annuities and £ 400 of E. I. stock. She by her will gave to her servant £ 10 per annum for life to be paid out of dividends on the S. S. annuities. The E. I. stock and S. S. Annuities were bequeathed to B subject to the payment of the annuity to servant. Subsequently she bought S. S. annuities for £ 100. She also sold the E. I. stock nd by adding to the produce thereof bought S. S. annuities for £ 800. On her refusing to to accept reduced interest she was paid off by bank draft £ 400 on S. S. annuities she originally held and the £ 100 she bought subsequently. She delivered the draft to one F to invest it in 3 per cent. annuities if he thought fit. F invested the amount in the very S. S. annuities sold by her without informing her of it — She before death made a codicil by which she gave her cousin T. B. the note for £ 500 which F had for her — Held that there was ademption and T. B. was entitled to £ 500 or what came in lieu of it. (1755) 28 E R 397 (398) = 2 Ves Sen 623.

Section 167 — Note 1

(1) A universal legatee is liable to the extent of the property of the testator in his hands for the debts and liabilities of the testator. AIR 1936 Oudh 7 (9) = 12 Luck 1 (DB).

(2) A testator made a gift of certain decrees to B on condition that he paid C Rs. 15000 with interest the amount being a debt due from

whom he claims,† then, unless a contrary‡ intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

(2) A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.§

Illustrations

(i) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D to whom it has been pledged by A. It is the duty of A's executors, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(ii) A bequeaths to B a zamindari which at A's death is subject to a mortgage for 10,000 rupees; and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estates, to pay the sum of 11,000 rupees thus due.

[1865—S. 154.]

[*] The section applies to Hindus, etc.—See S. 57 and Sch. III.

[†] As to liabilities incident to the thing bequeathed, but not 'created by the testator', etc., see Ss. 169, 170, infra.

[‡] As where there is a direction that the debts should be paid out of some other Fund. But a general direction to pay 'all just debts as soon as may be' is not enough to show a contrary intention.

[§] Nor is a lien for unpaid purchase money—See S. 168, illustration (i).

Section 167—Note 1 (contd.)

the testator to C — Held, that a charge was created by will on the property and the legatee was bound to discharge the debt. **(1888) 15 Cal 66 (70) = 14 Ind App 137 (P C).**

(3) T. H. devised his copyhold land to his wife for life and then to his son S till his grandson T attained the age of 23, and when T so attained that age to him and his heirs with a condition that T should pay within 2 years of such age the sum of £ 60 to E the granddaughter. In default the testator empowered E, her executors and administrators to enter into the permises and take the rents thereof till she got the £60. E became married and lived till T her brother attained the age of 23 but died before the expiry of two years thereafter. E's husband as administrator sought to recover the amount and it was held that it ought to be raised out of the copyhold land and paid to him. (1742) 26 E R 705 (706) = 2 Atk 507.

(4) Testator devising specifically one of his two estates subject to the same mortgage — Other estate which was to pass by residuary devise was also held to be specified devise and that both estates bear the burden rateably. (1869) 7 Eq 371 (375).

(5) Testator directing payment of his debts and funeral and testamentary expenses and giving his freehold house to his wife with all the furniture and house-hold contents absolutely to do with as she thinks proper. Freehold house subject to a mortgage along with the other real estate of testator: Held, that the freehold should bear the mortgage debt rateably and that the words to do with as she thinks proper did not show a contrary intention. (1886) 33 Ch D 195 (197).

(6) The mere direction that all the debts should be paid out of the personal estate of the testator does not amount to the expression of a contrary intention so as to enable the devisee of an estate mortgaged to take it free of the mortgage and have the mortgage amount paid out of the personal estate. (1862) 54 E R 1117 (1118) = 31 Beav 207.

(7) A after narrating his intention of entering into an arrangement by charging his real estate for the purpose of acquiring the absolute interest in reversion of certain consols devised the real estate subject to such arrangements he may enter into and the personal estate otherwise. Subsequently he got the consols transferred by mortgaging his real interest. The trustees who held the consols and the persons having life interest in them covenanted with testator that they will not call for retransfer except for default in payment of sum. Testator attached a codicil to his will subsequently not referring to transaction: Held, that there was clear intention to the contrary both in the will and the subsequent documents. (1893) 2 Ch 206 (215).

(8) The liability to discharge the debts of the person from whom property is received is confined only to the legal representative or the heir at law. The expression legal representative would include persons who have taken on themselves the duties and responsibilities which belong to the office of an executor or administrator. It includes the universal legatee. But it can never include trespassers or persons who take possession of the property from the legatees of a part of the estate. AIR 1961 Andh Pra 29 (30).

168. Completion of testator's title to things bequeathed to be at cost of his estate.* —Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations

(i) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(ii) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.†

[1865—S. 155.]

[*] Section applies to Hindus, etc.—See S. 57 and Sch. III.

[†] Also see illustration (ii) to S. 170, infra.

169. Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically.*—Where there is a bequest of any interest in immovable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them, as the case may be, up to the day of his death.

Illustration

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate will make good 25 rupees in respect of the rent.

[1865—S. 156.]

[*] The section applies to Hindus, etc.—See S. 57 and Sch. III.

170. Exoneration of specific legatee's stock in joint-stock company.* —In the absence of any direction in the will, where there is a specific bequest of stock† in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of the stock,† such call or payment shall, as between the testator's estate and the legatee, be borne by the estate; but, if any call or other payment becomes due in respect of such stock after the testator's death, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the bequest.‡

Illustrations

(i) A bequeaths to B his shares in a certain railway. At A's death there was due from him the sum of 100 rupees, in respect of each share, being the amount of a call which had been duly made, and the sum of five rupees in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(ii) A has agreed to take 50 shares in an intended joint-stock company, and has contracted to pay up 100 rupees in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(iii) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(iv) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(v) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of fifty rupees per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

[1865—S. 157.]

[*] The section applies to Hindus, etc.—see S. 57 and Sch. III.

[†] Or shares.

[‡] Where the legatee repudiates the bequest he cannot be subjected to any of the liabilities attaching to testator's interest.

CHAPTER XVIII

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS

171. Bequest of thing described in general terms.*—If there is a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations

(i) A bequeaths to B a pair of carriage-horses or a diamond ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(ii) A bequeaths to B "my pair of carriage-horses". A had no carriage-horses at the time of his death. The legacy fails.

[1865—S. 158.]

[*] The section applies to Hindus, etc.—see S. 57 and Sch. III.

CHAPTER XIX

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND

172. Bequest of interest or produce of fund.* — Where the interest or produce of a fund† is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration,‡ the principal, as well as the interest, shall belong to the legatee.

Illustrations

(i) A bequeaths to B the interest of his 5 per cent. promissory notes of the Central Government. There is no other clause in the will affecting those securities. B is entitled to A's 5 per cent. promissory notes of the Central Government.

(ii) A bequeaths the interest of his 5½ per cent. promissory notes of the Central Government to B for his life, and after his death to C. B is entitled to the interest of the notes during his life, and C is entitled to the notes upon B's death.

(iii) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

[1865—S. 159.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

[†] Here 'fund' includes any property, whether moveable or immoveable, from which profit accrues. See Illustration (3).

[‡] Such intention will not be inferred merely from the fact that in other parts of the will the testator has used words expressly conferring an unlimited interest.

Section 172 — Note 1

(1) Section 172, although it speaks only of the interest or produce of a fund applies equally to immovable property. (See illustration (c) to that section). (1913) 40 Cal 192 (214).

(2) A gift of income without more is a gift of the corpus. (1913) 40 Cal 192 (214).

(3) Will dedicating entire property of testator to deity and declaring that the heirs were to have no right of ownership or proprietorship —Further direction that the moiety of the income after meeting charges for management, government revenue, expenses of worship etc., was to be received as prasada by the heirs—Held, that the will bestowed a moiety of the profits on the heirs. (1911) 14 Cal L J 618 (620) (DB).

(4) Testatrix appointing executor and giving him power to spend entire amount for his own benefit—Will providing that if he turned out to be of immoral character one of the properties was to be sold and a temple built out of the proceeds—Held, that the estate belonged to the executor by reason of S. 172. AIR 1932 All 476 (478) (DB). (The clause prohibiting alienation was void as it was inconsistent with what was sought to be given.)

(5) Held on construction of the will that the prohibition against the withdrawal of the fund was invalid and the gift of the benefit, interest and profit of the fund was the gift of the corpus to the legatees and they took absolutely their respective shares. (1892) 15 Mad 448 (468).

(6) Immovable property of the testator to be retained by trustees appointed—Testator's son given balance of profits, etc., after meeting expenses to be dealt with as he might think fit —Son's sons given a gift over with power to call for accounts from the son on their attaining age of 21 : Held that the son was to have only a limited estate. (1896) 20 Bom 450 (464) (DB).

(7) There is no distinction between giving the income of the land and the rents and profits of the land. Income means the rents and profits of the land and the rents and profits mean the income. There the gift of the income of the land unrestricted is simply a gift of the fee simple of the land. (1872) 14 Eq 456 (462) ** AIR 1935 Sind 235 (242)**(1882) 8 Cal 788 (801) (DB).

(8) Testator specifying shares of legatees — Rent was to be distributed, because continuance of tenants of properties desired by testator

CHAPTER XX

OF BEQUESTS OF ANNUITIES

173. Annuity created by will payable for life only unless contrary intention appears by will.* — Where an annuity† is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will, notwithstanding that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations

(i) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(ii) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(iii) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

[1865—S. 160.]

[See Estate Duty Act (1955), Ss. 15, 16 : Wealth Tax Act (1957), S. 2 (e) (iv).]

[*] The section applies to Hindus, etc.—see S. 57 and Sch. III.

[†] Annuity is an yearly payment of a certain sum of money granted to another in fee, for life or for years. It is of 3 kinds : (1) for a term ; (2) for life or (3) perpetual. This section deals with the second kind.

Section 172 – Note 1 (contd.)

—Bequest to two ladies for life only — Corpus of properties held given to legatees. AIR 1963 Pat 430 (434, 435) (DB).

(9) Where the testator did not make a bequest of the property to D but merely appointed him and his heirs as trustees of the property in particular contingency and to take the surplus income after discharging the obligations, S. 172 would not apply. (1971) 84 Mad L W 40 (43).

Section 173 — Note 1

(1) Annuity is a right to receive a specified sum and not an aliquot share in the income arising from any fund or property. Ordinarily it is a money payment of a fixed sum annually made and is a charge personally on the grantor. **AIR 1971 SC 915 (918)=(1970) 3 SCR 819.**

(2) Sections 173 and 174 deal expressly only with the case where an annuity is bequeathed to a legatee without a gift over to his heirs. ILR (1947) 1 Cal 304 (306).

(3) The principle enunciated in S. 160 (corresponding to S. 173 of the Act of 1925) cannot apply when a contrary intention appears in the document. AIR 1920 Cal 192 (193) (DB) ** AIR 1967 Ker 79=1966 Ker L J 275.

(4) Will providing that annuity should be paid during period other than life time of annuitant — There is contrary intention. AIR 1962 Cal 513 (515, 516)=66 Cal W N 240 (DB).

(5) The simple grant to a person carries no more than a life interest in the annuity in the absence of a contrary intention. (1903) 5 Bom L R 729 (734).

(6) Section 160 (corresponding to S. 173) does not require that the contrary intention of the testator to which it refers should be indicated by express words. It is sufficient if the contrary intention appears sufficiently from the language of the will read as a whole. (1921) 62 Ind Cas 681 (683) (DB) (Cal).

(7) A christian bequeathed to F annuity of Rs. 300 and to H an annuity of Rs. 240 and provided that those annuities would continue to be enjoyed by F and H and their male descendants and in the event of death of any of them without male issue, the other and his male descendants would be entitled to both annuities. Further, fund of a permanent nature was to be established out of which a perpetual income was to be obtained and paid as annuities to F and H and their male descendants: held that the benefit was not limited to life-interest, and the annuities were gifts of income unlimited in point of time with no reservation or limitations beyond the beneficiaries F and H. ILR (1947) 1 Cal 304 (306, 311).

(8) An annuity is perpetual only in those cases where it is a charge on a specific property in which circumstances the law assumes that it is not annuity alone, but the property itself that has been bequeathed. AIR 1940 Pat 257 (259) (DB).

(9) In the absence of a clear indication of an intention that the annuity should be permanent one the legatee is entitled to receive only for his life. AIR 1967 Ker 79 (80)=1966 Ker L J 275.

(10) Hindu bequeathing property to one of his sons B and directing an annuity to be paid to one of his daughters till her minor sons attained majority and her daughters were married — Held that the annuity was payable to the daughter only during her lifetime and that her minor children were not entitled to receive the allowance after her death. AIR 1944 All 120 (122)=ILR (1944) All 209 ** ILR (1970) 1 Cal 441.

(11) Bond providing that annuitant should proceed against charged property in first instance — Charged properties falling in East Pakistan — Suit for recovery of annuity from other properties — Held, not maintainable. AIR 1959 Cal 268 (271)=63 Cal W N 227 (DB).

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174. Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.* — Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death, the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him or to receive the money appropriated for that purpose by the will.†

Illustrations

(i) A by his will directs that his executors shall, out of his property, purchase an annuity of 1,000 rupees for B. B. is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him or to receive such a sum as will be sufficient for the purchase of such annuity.

(ii) A bequeaths a fund to B for his life, and direets that after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

[1865—S. 161.]

[*] The section applies to Hindus, etc.—See S. 57 & Sch. III.

[†] And if the legatee dies before the testator, or before the money is laid out, the money belongs to the legatee's representative.

175. Abatement of annuity.* — Where an annuity† is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies‡ given by the will.

[1865—S. 162.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Here as well as in the next section, annuity seems to mean an annuity created by the will and charged on testator's estate.

[‡] The annuity is a general legacy. Therefore as between annuitants and legatees there is no priority where there is a deficient estate, but both must abate proportionately, irrespective of the fact that the annuity commences immediately on the death of the testator or at a future period or whether the legacies be immediate or on the death of an annuitant.

Section 174 — Note 1

(1) Section 174 embodies the rule of English law that where there is a bequest of a sum of money to be laid out in the purchase of an annuity, or there is a direction to purchase an annuity of a certain amount, the annuitant can require the trustees to pay up the value of the annuity rather than have it purchased for him. That section has no application when there is a simple bequest of an annuity without any bequest of the sum of money necessary to purchase annuity. AIR 1964 Guj 240 (244, 245, 246)=(1964) 5 Guj L R 1061.

(2) Section 174 and the illustration show that, where out of property a sum is to be set aside in order that it might furnish an allowance for a legatee who is to receive that allowance periodically, i. e., annually, the law recognises the right of the legatee to take that sum itself. ILR (1947) 1 Cal 304 (307).

(3) Where money is bequeathed to be invested in the purchase of an annuity for the life of the legatee and the legatee dies before it is laid out or even before the fund is available as during the life of the person after whose death the investment is to be made, yet it is a vested legacy from the death of the testator, and the legatee for whose benefit it was intended if survives the testator may elect to take the value of it instead of the annuity. 1906-2 Ch 648 (651, 653).

[See however 1891-1 Ch 707 (715).]

(4) Bequest of annuity without any bequest of a sum of money necessary to purchase annuity — S. 174 has no application so as to enable annuitant at his option either to have that money utilised for purchasing an annuity or to have that sum of money absolutely in a sum. (1970) 77 ITR 180 (Andh Pra) (DB).

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Section 175 — Note 1

(1) Provision in will for allowance to be paid out of profits — Allowance, liable to reduction on reduction of profits. AIR 1941 Oudh 203 (205).

(2) A will contained a general gift of annuity, general gifts of legacies and a gift of the residue and the entire estate was insufficient to pay the annuity — Held that the annuity was to be valued in consequence of deficiency of assets and a proportional abatement having been made, the reduced fund was to be set apart. (1847) 63 E R 1103 (1104) = 1 De G & Sm 357.

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176. Where gift of annuity and residuary gift, whole annuity to be first satisfied.*— Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

[1865—S. 163.]

[*] The section applies to Hindus etc.—See S. 57 & Sch. III,

CHAPTER XXI

OF LEGACIES TO CREDITORS AND PORTIONERS

177. Creditor prima facie entitled to legacy as well as debt.*—Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy, as well as to the amount of the debt.

[1865—S. 164]

[*] Section applies to Hindus etc.— See S. 57 & Sch. III.

178. Child prima facie entitled to legacy as well as portion.*—Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy, as well as the portion.

Illustration

A, by articles entered into in contemplation of his marriage with B covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

[1865 – S. 165.]

[*] Section applies to Hindus etc.—See S. 57 & Sch. III.

Section 176 — Note 1

(1) Annuitant is kind of legatee — Annuity is payable out of income if income is available — Rule however does not exist to limit right of annuitant — Will directing annuities to be charged upon residuary trust income — Rights of annuitants need not necessarily determine when residuary trust ceases to dispose of income and reach date for division of capital. AIR 1950 P C 7 (9, 10).

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Section 177 — Note 1

(1) The principle of S. 177 can be applied even to wills where the section itself is not applicable. AIR 1930 Mad 956 (960) (DB).

(2) Section 164 (S. 177 of the Act of 1925) expressly abolishes doctrine of satisfaction in India and although the Act itself is not applicable to Hindus, Mahomedans or Buddhists, yet it announces a correct principle of interpretation, universally applicable unless overridden by some special provision of local law or usage. (1913) 37 Bom 211 (214).

(3) Where there is no ambiguity in a clause, S. 62 (S. 75 of the Act of 1925), cannot be invoked to construe a clause in the will by letting in extrinsic evidence. (1910) 12 Bom L R 863 (865, 869).

(4) Section 177 is directly opposed to the principles of interpretation under the English law. AIR 1959 All 509 (510) = ILR [(1959) 2 All 297 (DB).

(5) One C by his will said "My elder brother, V's self-acquisition to the extent of about Rs. 10,000 is kept with me. So that money should be given to him" — Held, that the bequest of Rs. 10,000 was a legacy meant as satisfaction of the indebtedness of the testator to V for money kept with him by V. (1902) 25 Mad 361 (363) (DB).

(6) One D made a provision for maintenance of his daughter-in-law R by giving her property worth Rs. 15,000, even though the property in possession of D was subject to R's charge for maintenance at the rate of Rs. 20 per mensem. There was no mention of this charge in the will itself — Held, that R was entitled to the legacy as well as the arrears of maintenance by virtue of S. 177. AIR 1959 All 509 (510) = ILR (1959) 2 All 297 (DB).

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Section 178 — Note 1

(1) The grandfather is not in loco parentis to his grandchild for the purpose of raising the doctrine against double portions and a gift by a grandfather to the grandchild is not a portion. 1919-1 Ch 102 (108).

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179. No ademption by subsequent provision for legatee.* — No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations

(i) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(ii) A bequeaths 40,000 rupees to B, his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

[1865—S. 166.]

[*] Section applies to Hindus etc.—See S. 57 & Sch. III.

CHAPTER XXII

OF ELECTION

180. Circumstances in which election takes place.* — Where a person, by his will. professes to dispose of some thing† which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent‡ from it, and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

[1865—S. 167.]

[*] Section applies to Hindus etc.—See S. 57 & Sch. III.

[†] Some interest, whether immediate, remote, contingent, of some value or not of value, in property, whether moveable or immoveable.

[‡] Doctrine of election proceeds on the principle of forfeiture and not of indemnification of those whom the dissent disappoints.

Section 179 — Note 1

(1) Where S. 179 is found to be inapplicable to a will the principles of the section as embodying the general equitable principles can be applied. AIR 1930 Mad 956 (960) (DB).

(2) The rule of English law as applied to what are called 'double portions' is one which is based upon principles of equity, justice and good conscience and is one to be remembered in considering the intentions of the testator even though the will is governed by Hindu law. (1905) 7 Bom L R 299 (304, 305).

(3) The distinction between ademption and satisfaction is that in ademption the former benefit is given by a will which is a revocable instrument alterable at the pleasure of the testator. But where a person covenants to settle land or money on the marriage of a child which covenant he can neither adeem or alter, and if he by will gives some benefit to the same objects and states that that is to be in satisfaction of the covenants, the objects of covenant necessarily get the right either to take under the covenant or under the will. In cases of satisfaction, the person intended to be benefited by the covenant and the persons intended to be benefited by the bequest are the same; in cases of ademption they may be different. (1867) 2 H L 71 (90, 91).

Section 180 — Note 1

(1) Principle of election applies to all wills whether part 6 of Succession Act is applicable to them or not. AIR 1936 Mad 497 (498).

(2) Election in the technical sense is confined to the case of a gift or will where the donee or legatee is given a choice of accepting a property under the gift or will belonging to the donor or testator and in the alternative to fulfil some other condition which it is within his power to fulfil. AIR 1956 Pat 223 (226) (DB).

(3) In applying the doctrine of election, the intention of the testator has nothing to do with the construction of the will. AIR 1963 Mad 405 (407)=(1963) 2 Mad L J 261 (DB).

(4) Election under S. 180 means that a person cannot prefer to accept a benefit and refuse to be bound by the other provisions of the will. A person who wants to get a benefit under the will must conform to the entire provisions of the will. AIR 1954 Mad 556 (559).

(5) To attract the application of the doctrine of election there must be two sets of properties, one to which the testator is entitled and the other to which the person who gets a benefit is the owner. It is then that the owner legatee is put to the necessity of election as to whether he would accept the gift. The essence of the doctrine is that a person cannot affirm and at the same time dissent from the same document, accept one part and reject the other, receive the benefit provided and refuse to give full effect to it. AIR 1954 Mad 556 (559).

(6) The doctrine of election cannot be invoked by the defendants in a suit instituted for partition claiming the entire properties dealt with under the will as tarwad or family properties over which the testator had no absolute power of disposal. AIR 1954 Mad 556 (559).

(7) The doctrine of election involves compensation and not forfeiture. Therefore where the property which should be sequestered for the purpose of making compensation to the persons who have been disappointed by the failure of the appointment in their favour is

Section 180 — Note 1 (contd.)

given in such a manner that the testatrix herself must be deemed to intend that the persons to whom she gives it shall not deal with it and that it shall not be dealt with adversely to them, to imply a condition of election would be to imply a condition of election against the express language of the will. (1884) 27 Ch D 606 (612).

(8) The doctrine of election depends on an implied condition that the devisee will comply with all the provisions of the will by renouncing the right to his own property and the doctrine is equally applicable to wills made in India. (1890) 14 Bom 438 (440) (DB).

(9) If anyone has the right by law to take a share of a testator's estate which the testator has not given but otherwise disposed of, that person takes it against the will and cannot go on to found on the will and claim its benefit. 1908 App Cas 224 (232).

(10) The doctrine of election is utterly inapplicable to creditors. Therefore where the creditors take a benefit under a will of the testator by the devise for payment of the debts generally they shall not be prevented from laying claim to the property comprised in the devise to the widow as a provision for her in another part of the will. (1806) 12 Ves 136 (154) = 33 E R 53.

(11) The language of S. 180 and the illustration shows that a person, whose property has been disposed of by the testator by bequeathing it to another should elect to confirm such disposition of his property, in which case he would be entitled to the benefit. But, if he chooses to dissent from it and claims the property, as his, he shall not be entitled to the benefit provided for under the will. AIR 1954 Mad 556 (558).

(12) A person who accepts a benefit under a will is not precluded from disputing a transaction entered into by the testator long before his death and which is also not the subject of the will. AIR 1922 Mad 357 (358) (DB).

(13) Doctrine of election only arises where legatee derives some benefit from will to which he would not be entitled except for the will. **AIR 1967 S C 1153 (1155, 1156) = (1967) 2 SCR 448.**

(14) When the beneficiary does not claim any property bequeathed by the testator as his own no question of election arises. (1909) 9 Cal L J 19 (38) (DB).

(15) Where the gifts themselves are void no question of election can arise under the will. 1906-2 Ch 288 (293).

(16) Where the Court has to decide whether an election under Ss. 180 and 181 has in fact been made the time factor must enter into the account. A simultaneous approbation and reprobation does not amount to election either to approbate or reprobate. AIR 1939 Mad 485 (488, 489).

(17) Testator entitled to a provident fund and deposits in two other Funds, bequeathing all to his wife and daughters in definite shares — Nomination in respect of provident fund existing, the fund not disposable by will — **Held**, that the widow or persons representing her interest should elect either to take the Provident Fund alone or to stand by the will. AIR 1939 Mad 485 (488).

(18) Bequest of properties standing in the name of his wife by the husband—Wife producing will for registration and adopting under power given in will — Wife getting life estate in certain other properties by the will — **Held**, that the wife had elected to waive any right which she might have had in the properties bequeathed by the husband and her election bound her heirs also. AIR 1935 Mad 1066 (1067).

(19) Person empowered under the marriage settlement to appoint only the children of that marriage to certain hereditaments appointing a son of that marriage to these hereditaments but subject to the charge of all children including those by the second marriage— Appointment of the same son to his own property subject to a similar charge — **Held**, that children by second marriage should elect. (1882) 22 Ch D 555 (560).

(20) A advancing a certain sum of money to B on the latter assigning to him a covenant by C to transfer some stock. A by will giving C a certain amount of money and moneys due by C to her — A directing the retention by the executors of an amount equal to the value of the stock and to pay the surplus over the amount advanced by her — When C predeceased her she directed that the amount given to C should become part of her residuary estate and also that C's representatives should not be asked to pay or transfer the stock covenanted for by C to B and that B should not be asked to repay the amount advanced to him by her: **Held**, M cannot enforce the covenant for transfer of stock. (1873) 15 Eq 389 (393).

(21) A bequeathed his own and C's property and made provision larger than what C's wife would have had from C's ancestral property. C's wife sued for the provision made for her in A's will and got a decree for maintenance. Later she filed a suit for C's ancestral property — Held, that she was not entitled to make the claim having elected the provision for maintenance. (1886) 12 Cal 60 (63) (DB).

(22) As per the terms of a family arrangement the testatrix was to and did, occupy during her life two freehold houses in B Road and on her death her son the defendant was entitled to a half share of the beneficial interest therein and the two sons of her deceased daughter were entitled to the other half, each getting one quarter. The testatrix had no other houses in B Road. By her will she devised to the plaintiff 'my two freehold houses in B Road" and to the defendant another house and residue of the estate. Held that the doctrine of election applied to the case and the defendant must decide to elect in favour of the will and he would then have to give up the whole of his share in the houses or elect against the will. 1956-2 All E R 74 (77).

(23) The rule which has been embodied in S. 180 of the Indian Succession Act does not recognise the Principle of Compensation. Under its provisions if the legatee has been given any benefit under the will and his own property has also been disposed of by that very will he must relinquish all the claims under the will if he chooses to retain his property. **A I R 1969 S C 1311 (1314-15) = 1969 S C D 908.** (ILR (1965) 2 Ker 141, Reversed.)

(24) The question of election is mixed question of fact and law. Unless it can be shown that a benefit was conferred by the Will and that he took it as such benefit, doctrine of elec-

181. **Devolution of interest relinquished by owner.*** — An interest relinquished in the circumstances stated in section 180 shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

[1865—S. 168.]

[*] Section applies to Hindus etc.—See S. 57 & Sch. III.

182. **Testator's belief as to his ownership immaterial.***—The provisions of sections 180 and 181 apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations

(i) The farm of Sultanpur was the property of **C**. **A** bequeathed it to **B**, giving a legacy of 1000 rupees to **C**. **C** has elected to retain his farm of Sultanpur, which is worth 800 rupees. **C** forfeits his legacy of 1,000 rupees, of which 800 rupees goes to **B**, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(ii) **A** bequeaths an estate to **B** in case **B**'s elder brother (who is married and has children) shall leave no issue living at his death. **A** also bequeaths to **C** a jewel, which belongs to **B**. **B** must elect to give up the jewel or to lose the estate.

(iii) **A** bequeaths to **B** 1,000 rupees, and to **C** an estate which will, under a settlement, belong to **B** if his elder brother (who is married and has children) shall leave no issue living at his death. **B** must elect to give up the estate or to lose the legacy.†

(iv) **A**, a person of the age of 18, domiciled in ‡[India] but owning real property in England, to which **C** is heir at law, bequeaths a legacy to **C** and, subject thereto, devises and bequeaths to **B** "all my property whatsoever and wheresoever", and dies under 21. The real property in England does not pass by the will.§ **C** may claim his legacy without giving up the real property in England.

[1865—S. 169.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

[†] This shows that the doctrine of election applies to contingent interests.

[‡] Substituted for "the States" by the Part B States (Laws) Act, 1951 (III of 1951), S. 3 and Schedule [1.4.1951].

[§] This is because A by English law is an infant, incapable of making a will and succession to immoveable property is regulated by the lex loci rei sitae.

Section 180 — Note 1 (contd.)

tion cannot be invoked against him to prevent him from enforcing his absolute rights in such property. A I R 1967 Mad 404 (408) = (1967) 1 Mad L J 96.

(25) Bequest of a sum of money to testator's minor daughter out of provident fund, gratuity and other assets of testator—Remaining amount to go to mother and sisters in equal shares — Testator held intended to deal with special contribution to Provident fund to which minor child had a contingent right under Rules of Provident Fund—Doctrine of election held was applicable to testator's daughter. AIR 1964 Mad 227 (229).

(26) Claim by legatees against administratrix for payment of certain amounts to them instead of to a minor legatee—Decision of Court that case of minor legatee was governed by S. 180 arrived at when minor was not represented by guardian — Decision is not binding on minor and he is entitled to reagitate it at subsequent stage of proceeding. A I R 1964 Mad 227 (228).

Section 181 — Note 1

(1) In any case in which the Court has to decide whether an election under Ss. 180 and 181 has in fact been made the time factor must enter into the decision. A I R 1939 Mad 485 (488).

(2) Will by husband giving to his wife all his personal and real property—Wife surviving her husband but dying having four persons who were next of kins before making an election — Three of them electing to take under the will, the fourth electing against it — Held, each of them had a distinct right to elect and that the person who elected against the will should be credited with an amount equal to his share of the dower annuity. (1868) 7 Eq 494 (497).

Section 182 — Note 1

(1) Where a person has a benefit already vested in him and a benefit which is inconsistent with that is given to him, he must elect between the two. (1870) 9 Eq 519 (523).

(2) D, a widow, inheriting movable and immovable property from her husband who died childless leaving by will Rs. 2000 to R and the rest of the properties to M who were the sons of the sisters of D's husband — R claimed as heir to a half share of the properties devised to M and also the legacy of Rs. 2000 under the will — Held, that the incapacity of D to devise the immovable property arose on the ground that a person cannot dispose of by will what does not

183. Bequests for man's benefit how regarded for purpose of election.* — A bequest for a person's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C : and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

[1865—S. 170.]

[*] Section applies to Hindus etc.—See S. 57 and Sch. III.

184. Person deriving benefit indirectly not put to election.* — A person taking no benefit directly under a will, but deriving a benefit under it indirectly, is not put to his election.

Illustration

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

[1865—S. 171.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

185. Person taking in individual capacity under will may in other character elect to take in opposition.* — A person who in his individual capacity takes a benefit under a will may, in another character, elect to take in opposition to the will.

Illustration

The estate of Sultanpur is settled upon A for life, and after his death, upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

[1865—S. 172.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

186. Exception to provisions of last six sections.* — Notwithstanding anything contained in sections 180 to 185, where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, then, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Section 182 — Note 1 (contd.)
belong to him and that R should be put to election as between accepting legacy under the will or claiming half share as heir. (1890) 14 Bom 438 (441) (DB).

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Section 185 — Note 1

(1) A devising by will both his properties and his brother's to the nephews giving in lieu thereof suitable maintenance to brother's widow — Widow obtaining decree for maintenance on the basis of the will suing again for share of ancestral property as heir to her deceased husband — Held, she was not estopped by her previous election as her second claim was of a totally different character, namely as heir to her deceased husband. (1886) 12 Cal 60 (63) (DB). (But a claim to maintenance on the ancestral property would be barred.)

(2) C in his will stating that his brother V's self-acquisition to the extent of Rs.10.000 which was with him should be repaid — V receiving a part of it and suing for the balance —Previous suit by another brother for partition claiming property in C's hand to be joint family property which was dismissed — V supporting the claimant and also claiming a share for himself — Held, that V was not estopped from claiming the legacy by the decision in the partition suit and that there was no question of his having elected to take the money as a debt as he had failed to obtain it as a debt. (1902) 25 Mad 361 (364, 365) (DB).

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Illustration

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. **A** by his will bequeaths to his wife an annuity of 200 rupees during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000 rupees. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity but not the legacy of 1,000 rupees.

[1865—S. 172.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

187. When acceptance of benefit given by will constitutes election to take under will.*—Acceptance of a benefit given by a will constitutes an election by the legatee to take under the will, if he had knowledge† of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations

(i) **A** is owner of an estate called Sultanpur Khurd, and has a life interest in another estate called Sultanpur Buzurg to which upon his death his son **B** will be absolutely entitled. The will of **A** gives the estate of Sultanpur Khurd to **B**, and the estate of Sultanpur Buzurg to **C**. **B** in ignorance of his own right to the estate of Sultanpur Buzurg, allows **C** to take possession of it, and enters into possession of the estate of Sultanpur Khurd. **B** has not confirmed the bequest of Sultanpur Buzurg to **C**.

(ii) **B**, the elder son of **A**, is the possessor of an estate called Sultanpur. **A** bequeaths Sultanpur to **C**, and to **B** the residue of **A's** property. **B** having been informed by **A's** executors that the residue will amount to 5,000 rupees, allows **C** to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. **B** has not confirmed the bequest of the estate of Sultanpur to **C**.

[1865—S. 173.]

[*] Section applies to Hindus, etc.—see S. 57 and Sch. III.

[†] The Act is silent as to how the legatee is to obtain knowledge of "those circumstances".

188. Circumstances in which knowledge or waiver is presumed or inferred.*—(1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed† if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.‡

(2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Section 187 — Note 1

(1) The proposition that one taking possession under a will cannot set up an adverse title is subject to the qualification that the election must be made with full knowledge of circumstances. AIR 1934 Cal 356 (359) = 60 Cal 1406 (DB)** AIR 1927 Cal 494 (495) (DB)** AIR 1925 Cal 724 (726, 727, 729) (DB).

(2) The obligation to elect is cast upon a person by a rule of equity and not by any rule of law. Though knowledge of law can be imputed to every person knowledge of a rule of equity cannot be so imputed. Therefore a person who is not proved to have been informed of his obligation to elect cannot be said to have elected when he acts in ignorance of it. (1865) 11 H L C 588 (602, 603).

(3) Two things are essential to constitute a settled and concluded election (i) There must be clear proof that the person put to his election was aware of the nature and extent of his rights and (ii) it must be shown that having that knowledge he intended to elect. (1855) 20 Beav 67 (74)=52 E R 527.

(4) Election as a question of intention implies knowledge, and there may be a series of unequivocal acts from which an intention to elect and the fact of election may be inferred. (1865) 11 H L C 588 (602).

Section 188 — Note 1

(1) Section 175 (corresponding to S. 188 (2) of the Act of 1925) differs from S. 174 (S. 188 (1)) in that it only permits an inference while the latter section compels an inference. AIR 1925 Cal 724 (726, 727, 729) (DB).

(2) The rule contained in S. 188 (1) is an equitable rule which may be invoked even in cases to which the Act does not apply. AIR 1936 Mad 497 (498).

(3) Where an heir has chosen deliberately to confirm a devise of lands which without his confirmation would be invalid it is not necessary for the Court to have some distinct evidence of the heir's knowledge of his rights to enable the Court to hold that those claiming under him are bound by his confirmation. (1866) 2 Eq 834 (839).

(4) Where property gifted to another is claimed to have been bequeathed to the same

Illustration

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the bequest of the estate to B.

[1865—Ss. 174, 175.]

[*] Section applies to Hindus, etc.—See S. 57 and Sch. III.

[†] Presumption arising hereunder is rebuttable.

[‡] Until the 2 years have expired, a person having elected under a misconception seems to make a fresh election. Where either of the subject-matters of election is reversionary the two years will not begin to run till the reversion falls in.

189. When testator's representatives may call upon legatee to elect.*—If the legatee does not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election, and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

[1865—S. 176.]

[*] Section applies to Hindus, etc.—See S. 57 and Sch. III.

190. Postponement of election in case of disability.*—In case of disability the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

[1865—S. 177.]

[*] Section applies to Hindus, etc.—See S. 57 and Sch. III.

CHAPTER XXIII

OF GIFTS IN CONTEMPLATION OF DEATH*

191. Property transferable by gift made in contemplation of death.—(1) A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers,† to another‡ the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Section 188 — Note 1 (contd.)

person by a subsequent will as a limited owner, and the possession of such person for a long number of years has not been inconsistent with his possession as absolute owner or even as limited owner no inference that he made any election can be made. A I R 1967 Mad 404 (408)=(1967) 1 Mad L J 96.

Section 190 — Note 1

(1) Court has jurisdiction to bind the equitable interests of lunatics not so found by inquisition where it appears to be for their benefit. (1883) 22 Ch D 263 (269).

Section 191 — Note 1

(1) A gift under S. 191, relates to succession within the meaning of the Succession Act. AIR 1943 All 95 (96)=ILR (1943) All 193 (DB).

(2) Two classes of Donatio mortis causa, stated. (1915) 1 Ch 195 (202).

(3) Hindu Law recognises some gifts in contemplation of death. But to constitute a valid disposition by gift there must be a giving orally or in writing with the intention of passing the property in the thing given accomnied by its actual delivery and acceptance in the donor's lifetime. (1871) 6 Mad H C R 270 (273, 274) (DB).

(4) Under the Muhammaden law a gift made during illness operates as a will and is valid as regards one third of the property comprised therein. (1911) 33 All 233 (234) (DB).

(5) The question whether a gift is invalid under the law of marz-ul-maut is essentially a question of fact. (1908) 35 Cal 271 (274)=35 Ind App 67 (PC).

(6) Under Mahomedan law, the requirements which constitute a Marz-ul-maut (death-bed illness) are :

(1) Proximate danger of death so that there is a preponderance of khauf or apprehension that at the given time death must be more probable than life.

(2) There must be some degree of subjective apprehension of death in the mind of the sick person.

(3) There must be external indicia, chief among which would be the inability to attend to ordinary avocations. (1907) 31 Bom 264 (266) (DB).

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(3) Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.§

Illustrations

(i) **A**, being ill, and in expectation of death, delivers to **B**, to be retained by him in case of **A's** death,—

a watch :
a bond granted by **C** to **A** :
a bank-note :
a promissory note of the *[Central Government] endorsed in blank :
a bill of exchange endorsed in blank :
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch :
the debt secured by **C's** bond :
the bank-note :
the promissory note of the *[Central Government] :
the bill of exchange :
the money secured by the mortgage-deeds.

(ii) **A**, being ill, and in expectation of death, delivers to **B** the key of a trunk or the key of a warehouse in which goods of bulk belonging to **A** are deposited, with the intention of giving him the control over the contents of the trunk or over the deposited goods, and desires him to keep them in case of **A's** death. A dies of the illness during which he delivered these articles. **B** is entitled to the trunk and its contents or to **A's** goods of bulk in the warehouse.

(iii) **A**, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of **B** and **C**. The parcels are not delivered during the life of **A**. **A** dies of the illness during which he set aside the parcels. **B** and **C** are not entitled to the contents of the parcels.

[1865—S. 178.]

[*] "Donatio mortis causa". This is what is known as gift (Hiba) Marza.ul.maut, in Mohemadan law.

[†] By himself or another. Deed without delivery is not enough. There must be delivery.

[‡] The gift may be either to the donee or to some one for his use.

[§] Under S. 8 of the Estate Duty Act, 1953, such a gift is deemed to be property passing on death of the donor and is liable for payment of estate duty out of the estate of the donor.

PART VII

PROTECTION OF PROPERTY OF DECEASED

192. Person claiming rights by succession to property of deceased may apply for relief* against wrongful possession. — (1) If any person dies leaving property, moveable or immoveable, any person claiming a right by succession thereto or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

Section 192 — Note 1

(1) The Succession (Property Protection) Act (corresponding to Part 7 in Act of 1925) has a larger scope than S. 145, Criminal P. C. and affords a more appropriate remedy in cases involving disputes regarding succession to larger estates accompanied by breaches of the peace. AIR 1922 Pat 372 (376)=23 Cri L J 236.

(2) Under S. 192 provision is made for a party claiming a right of succession to the properties of a deceased to make an application to the District Judge either after actual possession has been taken by another person or when forcible means of seizing possession are apprehended. AIR 1960 Ker 47 (50) = ILR (1959) Ker 696 (DB).

(3) The expression 'succession' is not confined to intestate succession but also applies to testamentary succession. AIR 1926 Cal 779(780) =53 Cal 637 (DB) ** AIR 1934 Lah 930 (931).

(4) Section 1 of Act XIX of 1841 (S. 192 of Act of 1925) makes it manifest that an application may be made under it even when the applicant claims a right by succession to a portion only of the property left by the deceased which is sufficient to cover the case where the claim relates to an undivided share of the estate left by the deceased. (1910) 12 Cal L J 8(10) (DB).

(5) Sections 192 to 194 will not apply to a case where joint Hindu family property passes by survivorship. AIR 1938 Lah 753 (754) =

(2) Any agent, relative or near friend, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.

[Succession (Property Protection) Act, 1841—Ss. 1, 2.]

[*] This Part affords 'interim relief' pending final decision of rights of heirs in a regular suit. It provides a summary procedure in the nature of interlocutory proceeding. It can be well described as a quia timet action.

OBJECTS AND REASONS

"This Part (Ss. 192 to 210) deals with protection of property of the deceased. It is largely based on the Succession (Property Protection) Act, 1841 (19 of 1841) (Repealed by this Act). This Act was framed under the old system of drafting and certain slight changes of language have necessarily been made in introducing its provision in the consolidated Bill."—S.O.R.

193. Inquiry made by Judge.—The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made bona fide.

[Succession (Property Protection) Act, 1841—S. 3.]

Section 192—Note 1 (contd.)

ILR (1939) Lah 196 ** (1912) 23 Mad L J 537 (538) ** (1907) 34 Cal 929 (933) (DB).

(6) Person in possession and dispossessed is also protected by S. 192. AIR 1944 Nag 132 (133)=ILR (1944) Nag 262.

(7) Although the muth property may not vest in the Mahant as a owner it is he that has a right to its possession and hence an application under S. 192 by a person claiming a right to succeed to the muth property is maintainable. AIR 1942 Pat 251 (255, 256, 257)= 21 Pat 197 (DB).

(8) The idols are entitled to make an application under the Act and as the idol must act through some human agency shebaits can apply on their behalf. AIR 1926 Cal 779 (780) = 53 Cal 637 (DB).

(9) Application for relief should be in the nature of a plaint in a summary suit. The proceedings of the Court under Act XIX of 1841 are of interlocutory nature. An application for an inventory and appointment of curator is not contemplated by the Act and the Court cannot consider such an application. AIR 1924 Bom 507 (509, 510) (DB).

(10) In order to meet the requirements of S. 192 the Court must determine whether the objector to the grant of the application has any title and whether the claimant is really entitled to any title. AIR 1933 Cal 17 (18) (DB).

(11) In deciding an application under S. 192 the question is not how long either of the applicant and the opposite party had been living with the deceased but who was entitled to the property. A summary dismissal of the application without examining the applicant on oath and making any enquiry would amount to a material irregularity justifying interference in revision. AIR 1952 Cal 432 (433) (DB).

(12) Revision from decision under S. 192 is allowed. AIR 1938 Lah 753 (753) = ILR (1939) Lah 196 ** AIR 1927 Nag 253 (255).

(13) Only orders made without jurisdiction or with jurisdiction illegally exercised should be interfered with in revision. AIR 1933 Cal 17 (18) (DB).

(14) Application under S. 192 — Preliminary point as to maintainability decided in applicant's favour—No revision filed by objector till decision on merits — High Court should not exercise discretionary power in revision in respect of preliminary point. AIR 1942 Pat 251 (254)=21 Pat 197 (DB).

(15) Section 192 does not say that every order made by a District Judge is appealable. It limits it to orders made by him by virtue of the powers conferred upon him by the Succession Act. The order must be an adjudication of the rights of the parties. AIR 1953 All 663 (664) (DB).

(16) Order dismissing application under S. 192 —S. 209 applies and appeal does not lie. AIR 1953 All 707 (708) (DB).

Section 193 — Note 1

(1) Under S. 3 of Act (19 of 1841) the judge has to be satisfied that the applicant is really entitled to the property and is likely to be materially prejudiced if left to the ordinary remedy of regular suit before an order under the Act can be passed. Therefore an application for interlocutory orders ought not to be entertained under this Act as such orders could be passed in a regular suit by virtue of the wide powers possessed by Courts and as no person could be said to be materially prejudiced if he is referred to a regular suit wherein he could with ordinary diligence ask for such relief. AIR 1924 Bom 507 (510) (DB).

(2) Section 3 of Act 19 of 1841 (S. 193 of the Act of 1925) merely implies that an application ought not to be granted as a matter of course, but that the Court should proceed with caution and satisfy itself that there are sufficient grounds in support of a prima facie case. (1910) 12 Cal L J 8 (13) (DB).

194. Procedure. — If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly :

Provided that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for summoning the party complained of or not.

[Succession (Property Protection) Act, 1841—S. 4.]

Section 193 — Note 1 (contd.)

(3) Before action can be taken under Act 19 of 1841 (Part 7 of this Act) the provisions of S. 3 (S. 193) should be strictly fulfilled. They are that, (1) the opposite party has no title (2), the person claiming is really entitled to property and (3) that the applicant is likely to be prejudiced materially, if left to the ordinary remedy of a regular suit. (1912) 15 Ind Cas 504 (505) (DB) (Cal)**AIR 1923 Mad 229 (229)** (1910) 11 Cal L J 522 (523) (DB).

(4) Under S. 193, the District Judge has no doubt a discretion as to whether he should make further inquiry or not. The discretion however, has to be exercised judicially. When the petitioner has been examined on oath, it is open to him to accept or not to accept the statement made on oath, and in either case to proceed to ascertain the truth of the matter by further inquiry. AIR 1952 Cal 432 (432, 433) (DB).

(5) Under S. 3 of Act 19 of 1841 as it then stood the Judge who acted on the application supported by a solemn declaration was held to have had sufficient materials to justify his order under the Act. (1910) 34 Bom 115 (120) (DB).

(6) Under S. 3 of Act 19 of 1841 a solemn declaration by the agent of a Pardanashin lady was held sufficient. 1911 Pun L R No. 65, p. 289 (290).

(7) The judge must be satisfied that there are strong reasons for believing that the party in possession has no legal title before issuing any notice. (1912) 23 Mad L J 537 (538).

(8) Where the party in possession was an heir, but claimed half the property in dispute against the heirs on the ground of himself having been owner of it even during the lifetime of the deceased : Held that the Court had jurisdiction to proceed under the Act against him. AIR 1924 Bom 507 (508, 509) (DB).

(9) The first respondent claiming to be the sole heir and wife of the deceased filed an application under S. 192. The opposite parties were the two sisters of the deceased and their husbands and children. The District Judge after considering the allegations and the evidence given by the wife passed an order, issuing summonses to the opposite parties and directing an inventory to be prepared under S. 194 saying that he was satisfied that there was sufficient ground to believe the circumstances set out in the petition consistent with the provisions of S. 193 of the Act. Held, that the order passed by the District Judge was within his jurisdiction and it could not be said that the Judge had in any way acted in contravention of the provisions of S. 193. AIR 1960 Ker 47 (51) = ILR (1959) Ker 696 (DB).

(10) So far as the Succession Act alone stands the District Judge alone has jurisdiction to entertain proceedings under it. (1936) 38 Pun L R 398 (399, 400).

(11) Subordinate Judge has no jurisdiction to deal with application under the Act unless there was any general assignment of cases by District Judge. AIR 1918 Lah 380 (382) = 1918 Pun Re No. 72.

(12) Contravention of the provisions of S. 3 of Act XIX of 1841, (S. 193 of this Act), is a material irregularity and would be interfered with in revision in the absence of any other remedy to the aggrieved party. AIR 1918 Lah 380 (382) = 1918 Pun Re No. 72 ** AIR 1923 Mad 229 (229).

(13) Although the omission to observe strictly all the requirements of S. 193 of Succession Act may constitute a material irregularity in the exercise of jurisdiction, the High Court will not interfere in revision if the petitioner has availed himself of another remedy open to him by instituting a regular suit. AIR 1942 Lah 151 (151, 152).

(14) Court refusing to admit indirect evidence on ground that enquiry would be unreasonably prolonged cannot be said to have acted with material irregularity in exercise of its jurisdiction. AIR 1942 Pat 251 (257) = 21 Pat 197 (DB).

(15) District Judge not actually finding in words that there could be material prejudice — Facts found by him showing that this question was present in his mind — Held, that the finding was sufficient to maintain the application. AIR 1926 Cal 779 (781)=53 Cal 637 (DB).

(16) District Judge holding complete enquiry but committing technical irregularity of not recording before issuing notice to the opposite party the finding that he has satisfied himself that the applicant had a prima facie title to the property and that he would suffer material prejudice if left to the ordinary remedy of suit — Applicant also taking remedy by way of suit : Held, that there would be no interference in revision. AIR 1942 Lah 151 (151, 152).

(17) Section 193 itself provides that the District Judge after examining the applicant on oath may make such further inquiry as he thinks necessary. So if the inquiry is a little more elaborate than it need be it can be no ground for interfering in revision with the order of the lower Court. 1953 All L J 682 (683) (DB).

Section 194 — Note 1

(1) Section 194 will not apply to a case where joint Hindu family property passed by survivor-

195. Appointment of curator pending determination of proceeding. — If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary proceeding can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointment, and in no case beyond the determination of the summary proceeding and the confimation or delivery of possession in consequence thereof :

Provided that, in the case of land the Judge may delegate to the Collector or to any officer subordinate to the Collector, the powers of a curator :

Provided, further, that every appointment of a curator in respect of any property shall be duly published.

[Succession (Property Protection) Act, 1841 – S. 5.]

196. Powers conferable on curator. — The District Judge may authorise the curator to take possession of the property either generally, or until security is given by the party in possession, or until inventories of the property have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession :

Section 194 — Note 1 (contd.)

ship. AIR 1938 Lah 753 (754) = ILR (1939) Lah 196.

(2) Order under S. 194 can be passed only after conditions embodied in S. 193 have been fulfilled. AIR 1934 Lah 930 (931)**AIR 1960 Ker 47 (51) = ILR (1959) Ker 696 (DB).

(3) In the preliminary stage the Judge has merely to satisfy himself whether there are strong reasons to believe that the application is bona fide and that judicial action ought to be taken. This merely means that an application ought not to be granted as a matter of course. (1910) 12 Cal L J 8 (10).

(4) Summary rejection of application : Held, wrong — Applicant's deposition should have been taken. 1883 All W N 184 (184) (DB).

(5) Property ordered to be delivered to a person under S. 194 — No order demanding security from him could be passed under this Act. AIR 1933 Cal 17 (19) (DB).

(6) Court ordering nazir to take possession of property of deceased — Supratdar failing to deliver possession when required to do so — Court has jurisdiction to enforce liability of supratdar in same proceedings. 1942 Nag L J 325 (327).

(7) Failure to comply with provision of S. 21 of Act XIX of 1841 (S. 194 of this Act) is a material irregularity. Revision in such cases is allowed if there is no other remedy open to the aggrieved party. AIR 1918 Lah 380 (382)=1918 Pun Re No. 72.

(8) There is no bar as such to the revision being entertained against an order under S. 194. The limits and the grounds of interference have, however, to be sought in S. 115, Civil P. C. AIR 1944 Nag 132 (132) = ILR (1944) Nag 262.

(9) A summary disposal of an application under S. 192 without following the procedure prescribed by Ss. 193 and 194 amounts to a material irregularity justifying interference in revision. AIR 1952 Cal 432 (433) (DB).

Section 195 — Note 1

(1) Application for the appointment of curator —Disposal should not be postponed. AIR 1927 Nag 253 (254).

(2) Conditions necessary for the appointment of a curator are : (1) Presentation of an application and an examination as directed by S. 3 (now S. 193); (2) existence of apprehension of misappropriation or waste before summary suit could be determined; and (3) the delay in obtaining security or its insufficiency should be likely to cause considerable risk to the person who is out of possession. A I R 1914 Lah 523 (524) = 1915 Pun Re No. 11 (DB).

(3) Court has no jurisdiction to act and appoint a curator unless it is satisfied that otherwise the applicant would be materially prejudiced and that the application is bona fide and in the absence of any such finding the order can be set aside in revision. A I R 1923 Mad 229 (229)**A I R 1914 Lah 523 (524)=1915 Pun Re No. 11 (DB).

(4) Court finding that none of the conditions of S. 5 (S. 195 of this Act) was present — Judge passing the order for appointment having no evidence before him — Held that he acted with material irregularity and without jurisdiction. (1901) 24 Mad 364 (369) (SB).

(5) Before appointing a curator there should ordinarily be a clear statement by the Judge that he is satisfied as regards the requisites. AIR 1931 All 632 (634, 635)=54 All 183 (FB).

(6) The Judge is entitled to take into consideration the long delay which had occurred in applying while deciding the suitability and advisability of appointing a curator. AIR 1927 Nag 253 (255).

(7) Although proceedings contemplated by S. 195 terminate, appointment of the curator does not necessarily come to an end till he hands over possession of property. AIR 1931 All 423 (424) (DB).

(8) Where the District Judge had held that in his discretion the case was not a suitable or advisable one for the apppointment of a curator the High Court will not go into the question and determine whether or not the discretion was wisely exercised. AIR 1927 Nag 253 (255).

Provided that it shall be in the discretion of the Judge to allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories or the securing of deeds, or other effects.

[Succession (Property Protection) Act, 1841—S. 6.]

197. Prohibition of exercise of certain powers by curators.—(1) Where a certificate has been granted under Part X or under the Succession Certificate Act, 1889,* or a grant of probate or letters of administration has been made, a curator appointed under this Part shall not exercise any authority lawfully belonging to the holder of the certificate or to the executor or administrator.

Payment of debts, etc., to curator.

(2) All persons who have paid debts or rents to a curator authorised by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate or letters of administration, as the case may be.

[Succession Certificate Act, 1889—S. 23.]

[*] Repealed partly by the Indian Succession Act, 1925 (XXXIX of 1925) and finally by the Repealing Act, 1938 (I of 1938).

198. Curator to give security and may receive remuneration.—(1) The District Judge shall take from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter provided, and may authorise him to receive out of the property such remuneration, in no case exceeding five per centum on the moveable property and on the annual profits of the immoveable property, as the District Judge thinks reasonable.

(2) All suprlus money realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary proceeding.

(3) Security shall be required from the curator with all reasonable despatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator; but no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

[Succession (Property Protection) Act, 1841—S. 7.]

199. Report from Collector where estate includes revenue-paying land. — (1) Where the estate of the deceased person consists wholly or in part of land paying revenue to Government, in all matters regarding the propriety of summoning the party in possession, of appointing a curator, or of nominating individuals to that appointment, the District Judge shall demand a report from the Collector, and the Collector shall thereupon furnish the same :

Provided that in cases of urgency the Judge may proceed, in the first instance, without such report.

(2) The Judge shall not be obliged to act in conformity with any such report, but, in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the High Court, and the High Court, if it is dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

[Succession (Property Protection) Act, 1841—S. 8.]

200. Institution and defence of suits. — The curator shall be subject to all orders of the District Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate :

Provided that an express authority shall be requisite in the order of the curator's appointment for the collection of debts or rents: but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

[Succession (Property Protection) Act. 1841—S. 9.]

201. Allowances to apparent owners pending custody by curator. — Pending the custody of the property by the curator, the District Judge may make such allowances to parties having a prima facie right thereto as upon a summary investigation of the rights and circumstances of the parties interested he considers necessary, and may, at his discretion, take security for the repayment thereof with interest, in the event of the party being found, upon the adjudication of the summary proceeding, not to be entitled thereto.

[Succession (Property Protection) Act, 1841—S. 10.]

202. Accounts to be filed by curator. — The curator shall file monthly accounts in abstract, and shall, on the expiry of each period of three months, if his administration lasts so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the District Judge.

[Succession (Property Protection) Act, 1841—S. 11.]

203. Inspection of accounts and right of interested party to keep duplicate. — (1) The accounts of the curator shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by the curator.

(2) If it is found that the accounts of the curator are in arrear, or that they are erroneous or incomplete, or if the curator does not produce them whenever he is ordered to do so by the District Judge, he shall be punishable with fine not exceeding one thousand rupees for every such default.

[Succession (Property Protection) Act, 1841—S. 12.]

204. Bar to appointment of second curator for same property.— If the Judge of any district has appointed a curator, in respect of the whole of the property of a deceased person, such appointment shall preclude the Judge of any other district within the same *[State] from appointing any other curator,† but the appointment of a curator in respect of a portion of the property of the deceased shall not preclude the appointment within the same *[State] of another curator in respect of the residue or any portion thereof :

Provided that no Judge shall appoint a curator or entertain a summary proceeding in respect of property which is the subject of a summary proceeding previously instituted under this Part before another Judge :

Section 200 — Note 1

(1) Section 200 does not require specific authorisation from the District Judge to institute or defend suits. A I R 1931 All 423 (424) (DB).

Provided, further that if two or more curators are appointed by different Judges for several parts of an estate, the High Court may make such order as it thinks fit for the appointment of one curator of the whole property.

[Succession (Property Protection) Act, 1841—S. 13.]

[*] Substituted for 'Province' by A. L. O. 1950.

[†] Can a District Judge from another State appoint a second curator?

205. Limitation of time for application for curator.—An application under this Part to the District Judge must be made within six months of the death of tho proprietor whose property is claimed by right in succession.

[Succession (Property Protection) Act, 1841 — S. 14.]

206. Bar to enforcement of Part against public settlement or legal directions by deceased. — Nothing in this Part shall be deemed to authorise the contravention of any public act of settlement or of any legal directions given by a deceased proprietor of any property for the possession of his property after his decease in the event of minority or otherwise, and, in every such case, as soon as the Judge having jurisdiction over the property of a deceased person is satisfied of the existence of such directions, he shall give effect thereto.

[Succession (Property Protection) Act, 1841 — S. 15.]

207. Court of Wards to be made curator in case of minors having property subject to its jurisdiction.—Nothing in this Part shall be deemed to authorise any disturbance of the possession of a Court of Wards of any property and in case a minor, or other disqualified person whose property is subject to the Court of Wards, is the party on whose behalf application is made under this Part, the District Judge, if he determines to summon the party in possession and to appoint a curator, shall invest the Court of Wards with the curatorship of the estate pending the proceeding without taking security as aforesaid, and if the minor or other disqualified person, upon the adjudication of the summary proceeding, appears to be entitled to the property, possession shall be delivered to the Court of Wards.

[Succession (Property Protection) Act, 1841 — S. 16.]

208. Saving of right to bring suit.—Nothing contained in this Part shall be any impediment to the bringing of a suit either by the party whose application may

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Section 205 — Note 1

(1) A reversioner claims to be the owner of the property after the death of the widow and is, therefore, in a sense claiming the property by right 'in succession' within the meaning of S. 205. 1953 All L J 682 (683) (DB).

(2) A reversioner is entitled to apply under S. 205 within six months of the date of death of the widow. Limitation does not run from the date of the death of the last male owner. The word "proprietor" in S. 205 is wide enough to include a Hindu widow or a limited owner. 1953 All L J 682 (683) (DB).

(3) Application under this section should be made within six months of the death of the last deceased holder. AIR 1926 Cal 779 (780)= 53 Cal 637 (DB) ** (1910) 34 Bom 115 (119, 120) (DB).

Section 206 — Note 1

(1) Deceased proprietor having given lawful directions for the possession of his property during the minority of his son, the judge should give effect to them and should not put the Act into force so as to contravene them. (1889) 12 Mad 341 (347) (DB).

(2) Section implies that when the person complained against offers to prove that there are directions given by the deceased the Judge acting in summary proceedings should enquire into the allegations before passing any further order. (1912) 23 Mad L J 537 (539).

Section 208 — Note 1

(1) Where the remedy by way of suit is open to a person under S. 208 it is not necessary for the High Court to exercise its power of revision. AIR 1929 Nag 317 (318).

have been rejected before or after the summoning of the party in possession, or by the party who may have been evicted from the possession under this Part.

[Succession (Property Protection) Act, 1841 — S. 17.]

209. Effect of decision of summary proceeding.—The decision of a District Judge in a summary proceeding under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.

[Succession (Property Protection) Act, 1841 — S. 18.]

210. Appointment of public curators.—The °[State Government] may appoint public curators for any district or number of districts; and the District Judge having jurisdiction shall nominate such public curators in all cases where the choice of a curator is left discretionary with him under this Part.

[Succession (Property Protection) Act, 1841 — S. 19.]

[°] Substituted for 'Provincial Government' by A. L. O. 1950,

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Section 209 — Note 1

(1) In considering S. 209, one must bear in mind that the Act is one to consolidate the law applicable to intestate and testamentary succession which was formerly dealt with by a number of Acts. A list of those Acts is given in Schedule IX of the Act. AIR 1953 All 707 (708) (DB).

(2) The object of the Act was to meet cases of unlawful possession or disturbance of possession under pretended claims of right and to discountenance the employment of force and fraud. The proceedings under Part VII are summary proceedings and the only effect of those proceedings would be to settle the question as to who shall remain in actual possession of the property pending decision by a competent Court. All such orders, therefore, which can come under Part VII are governed by S. 209 and are not subject to appeal or review. AIR 1953 All 707 (708) (DB)**AIR 1953 All 663 (664) (DB)**AIR 1922 All 337 (338)=44 All 546 (DB).

(3) Two widows, co-heirs of one A—Application for immediate possession—Judge passing order giving each widow possession of half of the properties in the proceeding in which he had no jurisdiction to decide title but only to decide question of actual possession—Held, the order amounted only to an arrangement for separate possession leaving the title to each share unaffected. **(1867) 11 Moo Ind App 487 (515) (PC).**

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